

**BEFORE THE TENNESSEE REGULATORY AUTHORITY**

**NASHVILLE, TENNESSEE**

November 8, 2001

**IN RE:**

**SHOW CAUSE PROCEEDING  
AGAINST TALK.COM, INC.**

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**DOCKET NO.  
01-00216**

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**ORDER REQUIRING TALK.COM  
TO APPEAR AND SHOW CAUSE WHY A CEASE  
AND DESIST ORDER AND/OR FINE SHOULD NOT BE IMPOSED**

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This matter came before the Tennessee Regulatory Authority ("Authority" or "TRA") on the recommendation of the Consumer Services Division ("CSD"), pursuant to Tenn. Code Ann. §§ 65-2-106, 65-4-125, 65-4-405, Tenn. Comp. R. & Reg. 1220-4-2-.56, Tenn. Comp. R. & Reg. 1220-4-2-.58 and 1220-4-11-.07 to consider preliminary findings of the CSD against Talk.com and its affiliated companies and determine whether to require Talk.com to appear before the Authority and show cause why the Authority should not sanction Talk.com for its unlawful actions.<sup>1</sup>

**Procedural History**

A preliminary investigation conducted by the Authority, through the CSD, revealed that from September 1, 2000 through March 6, 2001 one hundred and sixty-six (166) Tennessee consumers filed complaints against Talk.com or its affiliated companies. Many of these

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<sup>1</sup> Talk.com is affiliated with or also known as the following: Access One, Access One Communications, The Phone Company, The Other Phone Company, AOL Long Distance and Tel-save. On April 9, 2001 Talk.com issued a press release stating that it had changed its name to Talk America Holdings, Inc., marketing under the TalkAmerica® brand. On May 7, 2001, Talk.com filed a request for name change in the TRA. At the regularly scheduled Authority Conference on May 12, 2001, the Directors unanimously voted to defer a ruling on that request.

complaints allege that Talk.com changed the consumer's preferred local exchange, interLATA or intraLATA carrier without proper authorization in violation of Tenn. Code Ann. §65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.<sup>2</sup> Other complaints allege that Talk.com billed and collected (1) charges for services to which Talk.com or its agents knew or reasonably should have known the subscriber had not ordered or (2) amounts in excess of those specified in the tariff or contract governing the charges for such services in violation of Tenn. Code Ann. §65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58. The CSD also received consumer complaints that Talk.com knowingly had made or caused to be made telephone solicitations to residential subscribers who gave notice to the Authority of their objection to receiving telephone solicitations in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11-.07.

On March 6, 2001, the Directors voted unanimously to open Docket No. 01-00216 "for the purpose of further investigation and the initiation of show cause proceedings against Talk.com, Inc. for failure to comply with Tenn. Code Ann. §§ 65-4-125, 65-4-404 and Tenn. Comp. R. & Regs. 1220-4-2-.56 and 1220-4-11-.07." General Counsel or his designee was appointed as Pre-Hearing Officer for the purpose of handling preliminary matters to prepare this case for a hearing.

During the course of this preliminary investigation, Tennessee consumers have continued to file complaints against Talk.com. From March 7, 2001 to August 27, 2001 one hundred and ninety-five (195) Tennessee consumers filed additional complaints against Talk.com or its affiliated companies. Since December of 2000, the CSD has received more slamming complaints against Talk.com than any other telecommunications service provider. During the

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<sup>2</sup> The changing of a consumer's local, preferred interLATA carrier and/or preferred intraLATA carrier service where the submitting carrier has not complied with Tenn. Code Ann. § 65-4-125 is deemed "slamming" under Tenn. Comp. Rules & Reg. 1220-4-2-.56(1)(h).

course of this preliminary investigation, the CSD has also continued to receive complaints that Talk.com violated the "Do Not Call" provisions of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1 and 1220-4-11-.07.

**Legal Authority Underlying Docket No. 01-00216**

Tenn. Code Ann. § 65-4-125(a) states:

- (a) No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall designate or change the provider of telecommunications services to a subscriber if the provider or person acting on behalf of the provider knows or reasonably should know that such provider or person does not have the authorization of such subscriber.

Tenn. Code Ann. § 65-4-125(b) states:

- (b) No telecommunications service provider, and no person acting on behalf of any telecommunications service provider, shall bill and collect from any subscriber to telecommunications services any charges for services to which the provider or person acting on behalf of the provider knows or reasonably should know such subscriber has not subscribed, or any amount in excess of that specified in the tariff or contract governing the charges for such services.

Tenn. Code Ann. § 65-4-404 states:

No person or entity shall knowingly make or cause to be made any telephone solicitation to any residential subscriber in this state who has given notice to the authority, in accordance with regulations promulgated pursuant to this part, of such subscriber's objection to receiving telephone solicitations.

The regulations promulgated pursuant to Tenn. Code Ann. §§ 65-4-125(a) and (b) and Tenn. Code Ann. § 65-4-404 are, respectively, Tenn. Comp. R. & Reg. 1220-4-2-.56, Tenn. Comp. R. & Reg. 1220-4-2-.58 and 1220-4-11-.07. (Available at <http://www.state.tn.us/tra/trarules.htm> and <http://www.state.tn.us/sos/rules/rules.htm>).

Under Tenn. Code Ann. § 65-4-125(f), telecommunications service providers or persons acting on their behalves who violate Tenn. Code Ann. § 65-2-125 or any regulation promulgated pursuant to said section or any order issued to enforce the provisions of said section shall be

subject to a civil penalty of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day of any such violation. Furthermore,

[a]ny telecommunications provider or person acting on behalf of a telecommunications provider who violates the provisions of this section or regulations promulgated pursuant to this section shall pay damages to each subscriber affected by such conduct in an amount equal to all charges and fees for services for which the subscriber has not subscribed, including all amounts in excess of allowable charges for such services, and any cost incurred to reinstate the subscriber's original telecommunications service.

Tenn. Code Ann. § 65-4-125(g).

Upon a finding that Section 65-4-401 *et seq.* was violated, Tenn. Code Ann. § 65-4-405(f) authorizes the Authority “to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation, and to seek additional relief in any court of competent jurisdiction.”

#### **COMPLAINTS ALLEGING VIOLATIONS OF TENN. CODE ANN. § 65-4-125(a):**

##### **SLAMMING**

Most of the slamming complaints against Talk.com arise from two methods of solicitation: (1) promotional checks and (2) telemarketing. The CSD’s preliminary investigation reveals that Talk.com systematically violated Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56 while pursuing Tennessee customers using both these methods of solicitation.

##### **I. Promotional Checks**

The complaints alleging slamming violations through the use of promotional checks arose because Talk.com failed to utilize procedures to assure that the individuals who received and/or cashed the promotional checks were authorized to consent to the change in telecommunications service. *See* Tenn. Code Ann. § 65-4-125. Talk.com sent many of the

checks to addresses having no connection to the individuals Talk.com sought to solicit. When the checks were cashed by individuals other than those named on the promotional checks, Talk.com failed to initiate adequate screening measures to assure that such individuals had the authority to authorize a change in telecommunications service for the number on the check.

The promotional checks disseminated by Talk.com to complaining Tennessee consumers also failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(a)(4) as follows:

1. The checks failed to include the correct "end user's billing name and address and each telephone number to be covered by the local and/or interLATA and intraLATA long distance service change order" in violation of Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(a);
2. The checks failed to confirm that the carrier designated as a preferred local exchange and/or interLATA and intraLATA long distance carrier is the carrier directly setting rates for the end user in violation of Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(a);
3. The checks failed to confirm that the end user understands that "any local exchange and/or interLATA and intraLATA carrier selection the end user chooses may involve a charge to the end user for changing the end user's local exchange and/or interLATA and intraLATA long distance carrier" in violation of Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(a);

The following consumer complaints allege slamming arising from noncompliant promotional checks.

1. John Smith of 3726 Misty Oak Drive, Memphis, Tennessee, filed a complaint with the CSD on November 14, 2000, alleging that his local telephone service had been switched to "AOL" without authorization.<sup>3</sup> (File No. 00-2192). The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on November 15, 2000.

In response to the complaint, Talk.com states that "John Smith's telephone number was switched, due to a processing error, when another customer with the same name signed and

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<sup>3</sup> The CSD's preliminary investigation indicates that John Smith's local, local toll and long distance service was switched from BellSouth to The Other Phone Company on October 28, 2000 and was switched back to BellSouth on November 14, 2000 at his request.

cashed a promotional check with his telephone number on it.” Talk.com provided the CSD with a copy of a \$50 check issued by America Online to John Smith of 7365 Shire Oaks Cove, Memphis, Tennessee. The CSD’s preliminary investigation indicates that telephone service at 7365 Shire Oaks Cove is listed in the name of J. Qualls. (John Smith’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 1).

**COUNT 1:** Talk.com provided unauthorized local, local toll and long distance service to John Smith for seventeen (17) days per each service resulting in a total of 51 days in violation of Tenn. Code Ann. § 65-4-125 and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 2:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

2. Marla Davis of 2903 15<sup>th</sup> Avenue, Apartment 2B, Chattanooga, Tennessee, filed a complaint with the CSD on November 21, 2000 (File No. 00-2231), alleging that her service was switched from BellSouth to The Other Phone Company without her authorization.<sup>4</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on November 22, 2000.

In response to the complaint, Talk.com states that “Edna Manley authorized the conversion of Marla Davis’ telephone service when she inadvertently signed and cashed a promotional check without indicating her correct telephone number on the back of the check.” Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Edna Manley, of 614 N. Greenwood Ave, Chattanooga, Tennessee, which incorrectly listed Marla Davis’ telephone number. The check had been cashed on July 31, 2000. With the assistance of

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<sup>4</sup> The CSD’s preliminary investigation indicates that Marla Davis’ local toll and long distance service was switched from BellSouth to The Other Phone Company on October 11, 2000 and was switched back to BellSouth on November 7, 2000. Ms. Davis’ local service was switched from BellSouth to The Other Phone Company on October 17, 2000 and was switched back to BellSouth on November 8, 2000 at her request.

CSD, Talk.com purportedly credited Marla Davis with the amount it claimed was due. (Marla Davis' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 2).

**COUNT 3:** Talk.com provided unauthorized local service for twenty-two (22) days and unauthorized local toll and long distance service to Ms. Davis for twenty-seven (27) days per each service resulting in a total of seventy-six days (76) in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 4:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

3. Gerald Cochrane of 69 Nickleby Down, Brentwood, Tennessee, filed a complaint with the CSD on December 19, 2000 (File No. 00-2419), alleging that Talk.com switched his telephone service without his authorization.<sup>5</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on December 20, 2000.

In response to the complaint, Talk.com states that his "number was placed on the Talk.com local and long distance service when another customer inadvertently signed and cashed a promotional check with Gerald Cochrane's telephone number printed on it." Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Jody Holshoe, 703 Saxony Lake Dr., Antioch, Tennessee, which had been cashed on July 12, 2000. The telephone number listed on the check belonged to Gerald Cochrane.<sup>6</sup> With the assistance of CSD, Talk.com purportedly credited Gerald Cochrane with the amount it claimed was due. (Gerald

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<sup>5</sup> The CSD's preliminary investigation indicates that Gerald Cochrane's local service with BellSouth was installed on October 30, 2000, his local, local toll and long distance services were switched to The Other Phone Company on November 10, 2000. His local service was switched back to BellSouth on December 20, 2000 and his local toll and long distance services were switched back to his preferred provider on December 18, 2000 at his request.

<sup>6</sup> The CSD's preliminary investigation indicates that Jody Holshoe cancelled her service with BellSouth at that number on July 30, 2000.

Cochrane's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 3).

**COUNT 5:** Talk.com provided unauthorized local service to Gerald Cochrane for forty (40) days and unauthorized local toll and long distance service for thirty-eight (38) days resulting in a total of one hundred and sixteen (116) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 6:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

4. Randy O'Neal of 3680 Price Road, Moscow, Tennessee, filed a complaint with the CSD on December 28, 2000 (File No. 00-2451), alleging that his local and long distance telephone service had been switched to The Other Phone Company without authorization.<sup>7</sup> Mr. O'Neal states that it took him nearly a month to get his service switched back due to the poor customer service provided by The Other Phone Company. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on December 29, 2000.

In response to the complaint, Talk.com states that "Randy O'Neal's service was switched in error when another customer signed and cashed a promotional check indicating his telephone number." Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Roy Garrens of P.O. Box 197, Oakland, Tennessee. With the assistance of CSD, Talk.com purportedly credited Mr. O'Neal with the amount billed. (Randy O'Neal's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 4).

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<sup>7</sup> The CSD's preliminary investigation indicates that Randy O'Neal's original date of installation with BellSouth was June 30, 2000. His local service was switched from BellSouth to The Other Phone Company on November 8, 2000 and was switched back to BellSouth on December 27, 2000. His local toll and long distance services were switched to The Other Phone Company on November 8, 2000 and switched back to his provider of choice on December 26, 2000.



**COUNT 7:** Talk.com provided unauthorized local service to Randy O'Neal for forty-nine (49) days and unauthorized local toll and long distance services for forty-eight (48) days per each service resulting in a total of one hundred and forty-five (145) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 8:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

5. Marvin Johns, of 503 Fred Sales Place, Sevierville, Tennessee, acting in his capacity as Chairman of the Trustees of Boyd's Creek Baptist Church, filed a complaint with the CSD on January 3, 2001 (File No. 01-0029), alleging that the telephone service at Boyd's Creek Baptist Church had been switched from BellSouth without authorization.<sup>8</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 3, 2001.

In response to the complaint, Talk.com states that "Marvin John's [sic] telephone number was placed on the service due to a processing error when another customer signed and cashed a promotional check with his telephone number on it." Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Whitey Black of 506 Smoky Mountain View Drive, Sevierville, Tennessee. The check had been cashed on August 22, 2000. With the assistance of CSD, Talk.com purportedly credited Marvin Johns with the amount billed and issued him a reimbursement check in the amount of \$69.63. (Marvin Johns' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 5).

**COUNT 9:** Talk.com provided unauthorized local, local toll and long distance service to Boyd's Creek Baptist Church for twenty seven (27) days per each service resulting in a total of

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<sup>8</sup> The CSD's preliminary investigation indicates that Marvin Johns' local, local toll and long distance service was switched from BellSouth to The Other Phone Company on October 21, 2000 and was switched back to BellSouth on November 27, 2000 at his request.

eighty-one (81) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 10:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

6. Marilyn Hesselgrave of 7331 Cresthill Drive, # E-4, Knoxville, Tennessee, filed a complaint with CSD on January 7, 2001 (File No. 01-0061), alleging that Talk.com switched her telephone service without authorization.<sup>9</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 8, 2001.

In response to the complaint, Talk.com states that Ms. Hesselgrave's "telephone number was switched due to a data processing error when another consumer signed and cashed a promotional check with her telephone number printed on it." Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Penny Smith of 7919 Westland Dr. Knoxville, Tennessee. The telephone number listed on the check belonged to Marilyn Hesselgrave.<sup>10</sup> With the assistance of CSD, Talk.com purportedly issued Marilyn Hesselgrave a credit in the amount it had billed her. (Marilyn Hesselgrave's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 6).

**COUNT 11:** Talk.com provided unauthorized local service to Marilyn Hesselgrave for twenty-eight (28) days and unauthorized local toll and long distance services for twenty-five (25) days per each service resulting in a total of seventy-eight (78) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

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<sup>9</sup> The CSD's preliminary investigation indicates that Marilyn Hesselgrave's local service was switched to The Other Phone Company on October 10, 2000 and switched back to BellSouth on November 7, 2000. Ms. Hesselgrave's local toll and long distance services were switched to The Other Phone Company on October 10, 2000 and back to her provider of choice on November 14, 2000.

<sup>10</sup> The CSD's preliminary investigation indicates that Marilyn Hesselgrave obtained her telephone on September 21, 2000. Before that date the number belonged to Pat L. Harris of 414 Forest Park Boulevard, Knoxville.

**COUNT 12:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

7. Jim Landers d/b/a Whitts Barbecue of 401 S. Cumberland Street, Lebanon, Tennessee, filed a complaint with the CSD on February 2, 2001 (File No. 01-0309), alleging that the local and long distance telephone service of Whitts Barbecue at telephone number (615) 443-1919 was switched to The Other Phone Company without authorization.<sup>11</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on February 6, 2001.

In response to the complaint, Talk.com's states that Mr. Landers':

telephone number was inadvertently authorized, when another consumer signed and cashed a \$50 promotional check without indicating his/her correct billing telephone number as directed on the reverse side. An order to provision 615-443-8649 and all associated lines (including the main billing telephone number) was submitted to convert Jim Landers' telephone numbers to our network. Due to the way the local exchange carrier provisions orders, Talk.com must submit each billing number and all associated lines including the main telephone number. If Talk.com submitted an order without all associated lines, the LEC would with [sic] reject the order or drop the line. Although an order to convert all lines was submitted, due to a delay in provisioning, as of today only two lines were converted to our network for long distance service and only one for local.

Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Mary Brisbane of 701 Enon Springs Rd. E. Lot 55, Smyrna, Tennessee. The check had been cashed on October 17, 2000. The telephone number listed on the check was (615) 443-8649. The CSD's preliminary investigation has established that, although this number is not mentioned in Jim Landers' complaint, it is an associated business phone line. With the assistance of CSD, Talk.com purportedly advised Jim Landers that it would waive all charges that had not yet billed out. (Jim Landers' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 7).

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<sup>11</sup> The CSD's preliminary investigation indicates that Whitts Barbecue's local, local toll and long distance service on two business lines, (615) 443-1919 and (615) 443-4543, was switched to The Other Phone Company d/b/a Access One on January 16, 2001 and was switched back to their former providers on February 13, 2001.

**COUNT 13:** Talk.com provided unauthorized local, local toll and long distance service to Whitts Barbecue on two separate lines for twenty-eight (28) days per service resulting in one hundred and sixty-eight (168) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 14:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

8. Esther Haynes of 9515 Bob Gray Road, Knoxville, Tennessee, filed a complaint with the CSD on February 13, 2001 (File No. 01-0365), alleging that The Phone Company switched her long distance telephone service without authorization.<sup>12</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on February 15, 2001.

In response to the complaint, Talk.com states that Ms. Haynes' "number was placed on Talk.com long distance when another consumer inadvertently signed and cashed a promotional check with her telephone number printed on it." Talk.com provided the CSD with a copy of a \$25 check issued by America Online to Jamie Hein of 9145 Jenny Cook Circle, Knoxville, Tennessee. The telephone number listed on the check belonged to Esther Haynes. With the assistance of CSD, Talk.com purportedly sent Esther Haynes a check to cover the switching fees. (Esther Haynes' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 8).

**COUNT 15:** Talk.com provided unauthorized local toll and long distance service to Esther Haynes for fifty-nine (59) days resulting in a total of one hundred and eighteen (118) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

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<sup>12</sup> The CSD's preliminary investigation indicates that Esther Haynes' local toll and long distance service was switched to The Phone Company on December 16, 2000 and switched back to her preferred providers on February 13, 2001.

**COUNT 16:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56.

9. John and Julie Helton d/b/a J & J Handling Systems, Inc. of 7808 Hale Road, Hixson, Tennessee, filed a complaint with the CSD on February 20, 2001 (File No. 01-0416), alleging that Talk.com switched **their** service without authorization.<sup>13</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on February 20, 2001.

In response to **the** complaint, Talk.com states that "another consumer inadvertently authorized the conversion of 423-842-3890, when they signed and cashed a \$50 promotional check." Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Joy Hilton of 5555 Hixon Pike, Hixson, Tennessee. The check was cashed on August 4, 2000. The telephone number listed on the check was 423-842-3890. With the assistance of CSD, Talk.com purportedly removed all billing information from the account to prevent future billing. (J & J Handling Systems, Inc.'s complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 9).

**COUNT 17:** Talk.com provided unauthorized local, local toll and long distance service to J & J Handling Systems, Inc. for fifty-six (56) days per each service resulting in one hundred and sixty-eight (168) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 18:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

10. C. Pat Anderson of 1220 Rome Pike, Lebanon, Tennessee, filed a complaint with the CSD on March 14, 2001 (File No. 01-0607), alleging that Talk.com switched her local and long

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<sup>13</sup> The CSD's preliminary investigation indicates that J & J Handling Systems, Inc.'s service with BellSouth was switched to The Other Phone Company on December 15, 2000 and was switched back to their former providers on February 9, 2001.

distance telephone service without authorization in October of 2000.<sup>14</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 15, 2001.

In response to the complaint, Talk.com states that Ms. Anderson's "number was placed on the Talk.com local and long distance service when another customer inadvertently signed and cashed a promotional check indicating her telephone number." Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Chris Anderson of 307 Cainsville Ct., Apt. 5B, Lebanon, Tennessee, which had been cashed on August 11, 2000. The telephone number listed on the check belonged to C. Pat Anderson. With the assistance of CSD, Talk.com purportedly credited Ms. Anderson for the billed amount. (C. Pat Anderson's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 10).

**COUNT 19:** Talk.com provided unauthorized local service to C. Pat Anderson for one (1) day and unauthorized local toll and long distance service for twenty-one (21) days per each service resulting in a total of forty-three (43) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 20:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

11. Donna Herald of 1520 Ryan Place, Columbia, Tennessee, filed a complaint with the CSD on March 16, 2001 (File No. 01-0615), alleging that that The Other Phone Company switched her telephone service without authorization.<sup>15</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 16, 2001.

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<sup>14</sup> The CSD's preliminary investigation indicates that C. Pat Anderson's local service with BellSouth was switched to The Other Phone Company on October 12, 2000 and was switched back to BellSouth on October 12, 2000. Her local toll and long distance service was switched to The Other Phone Company on October 12, 2000 and switched back to her former providers on November 2, 2000.

<sup>15</sup> The CSD's preliminary investigation indicates that Donna Herald's local service with BellSouth was switched to The Other Phone Company on March 5, 2001 and was switched back to BellSouth on March 21, 2001. Her local toll and long distance service was switched to The Other Phone Company on March 5, 2001 and back to her former provider on March 15, 2001.

In response to the complaint, Talk.com states that her "telephone number was changed to Talk.com Holding Corp. in error when another consumer signed and cashed a promotional check with Donna Herald's telephone number on it." Talk.com provided the CSD with a copy of a \$50 check issued by Talk.com to Penelope S. Owens of 2510 Campbellsville Pike, Columbia, Tennessee. The check was cashed on February 1, 2001. The telephone number listed on the check belonged to Donna Herald. With the assistance of CSD, Talk.com purportedly removed all billing information from her account to prevent future billing. (Donna Herald's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 11).

**COUNT 21:** Talk.com provided unauthorized local service to Donna Herald for sixteen (16) days and unauthorized local toll and long distance for ten (10) days per each service resulting in a total of thirty-six (36) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 22:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

12. Robert Whitaker of 5005 Hasty Drive, Nashville, Tennessee, filed a complaint with the CSD on March 21, 2001 (File No. 01-0664), alleging that Talk.com switched his telephone service without authorization in August 2000 and Talk.com continued to bill him.<sup>16</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 22, 2001.

In response to the complaint, Talk.com states:

Mr. Whitaker's telephone number was inadvertently converted when a Direct Mailer Promotional Check was signed and cashed with his telephone number on it. Our records indicate that there were modifications made to the back of the check for another telephone number, however, the pre-printed telephone number on the front of the check was inadvertently entered and provisioned.

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<sup>16</sup> The CSD's preliminary investigation indicates that Robert Whitaker's local service was switched to The Other Phone Company on August 17, 2000 and switched back to the previous providers on October 28, 2000.

Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Robert Whitaker of 1311 Haysboro Avenue, Nashville, Tennessee.<sup>17</sup> The telephone number listed on the check, (615) 331-9542, belonged to the complainant. Beneath this number, the check states, "If the telephone number or address is printed incorrectly, please make changes on the reverse side." Robert Whitaker denies any association with this check. With the assistance of CSD, Talk.com purportedly issued Robert Whitaker a credit for the amount billed. (Robert Whitaker's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 12).

**COUNT 23:** Talk.com provided unauthorized local service to Robert Whitaker for a total of seventy-two (72) days.

**COUNT 24:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

13. Barbara DeBlasio of 112 Shady Street, Summertown, Tennessee, filed a complaint with the CSD on March 27, 2001 (File No. 01-0729), alleging that The Other Phone Company switched her telephone service without authorization in March of 2001.<sup>18</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 28, 2001.

In response to the complaint, Talk.com states that Ms. DeBlasio's "number was switched due to a data processing error when another consumer signed and cashed a promotional check with her telephone number on it." Talk.com provided the CSD with a copy of a \$50 check issued by Talk.com to Jimmy A. Workman of 278 Oaks Road, Ethridge, Tennessee. The check was cashed on February 2, 2001. The telephone number listed on the check belonged to Barbara

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<sup>17</sup> The CSD's preliminary investigation indicates that the service at 1311 Haysboro Ave. is the name of Scott Wylie. The number listed at that address is (615) 226-8287.

<sup>18</sup> The CSD's preliminary investigation indicates that Barbara DeBlasio's local service with BellSouth was switched to The Other Phone Company on March 5, 2001 and was switched back to BellSouth on March 23, 2001.



DeBlasio. (Barbara DeBlasio's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 13).

**COUNT 25:** Talk.com provided unauthorized local service to Barbara DeBlasio for a total of eighteen (18) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 26:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

14. Sharon Jones of 234 British Woods Drive, Nashville, Tennessee, filed a complaint with the CSD on March 27, 2001 (File No. 01-0730), alleging that that Talk.com switched her telephone service without authorization.<sup>19</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 28, 2001.

In response to the complaint, Talk.com states that Ms. Jones' "telephone number was switched due to a data processing error when another customer signed and cashed a promotional check with her telephone number on it." Talk.com provided the CSD with a copy of a \$50 check issued by America Online to Shirley Jones of 731 Greymont Dr., Nashville, Tennessee. The check was cashed on August 1, 2000. The telephone number listed on the check belonged to Sharon Jones. With the assistance of CSD, Talk.com purportedly issued Sharon Jones a credit in the amount billed. (Sharon Jones' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 14).

**COUNT 27:** Talk.com provided unauthorized local, local toll and long distance service to Sharon Jones for sixty-three (63) days per service resulting in one hundred and eighty-nine

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<sup>19</sup> The CSD's preliminary investigation indicates that Sharon Jones' local, local toll and long distance service was switched to The Other Phone Company on October 17, 2000 and switched back to her former providers on December 19, 2000.

(189) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 28:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

15. Kerry Beyer of 2318 Cornwall Street, Germantown, Tennessee, filed a complaint with the CSD on April 13, 2001 (File No. 01-0892), alleging that Talk.com switched her telephone service without authorization.<sup>20</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 18, 2001.

In response to the complaint, Talk.com states:

Ms. Beyer's telephone number was placed on the Talk.com local and long distance service when another consumer inadvertently signed and cashed a promotional check indicating her telephone number 901-754-2885. The original Customer Service Record we received from Kerry Beyer's previous Local Exchange Carrier (LEC) contained two additional telephone numbers 901-755-1937 and 901-757-3766. All three numbers were converted to our local and long distance service in October 2000 and switched the provider of choice in December 2000. However, in February of 2001, Talk.com did a mass conversion of our accounts, converting them from resale to Unbundled Element Platform (UNE-P). Unfortunately, the provisioning representative did not confirm that Kerry Beyer's telephone service was still with Talk.com before placing the order, resulting in the switch of her local telephone service.

With the assistance of CSD, Talk.com purportedly issued a credit to Kerry Beyer for the entire account balance. (Kerry Beyer's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 15).

**COUNT 29:** Talk.com provided unauthorized local service to Kerry Beyer for fifty-eight (58) days and unauthorized local toll and long distance for twenty-six (26) days per each

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<sup>20</sup> The CSD's preliminary investigation indicates that Kerry Beyer's local service was switched to The Other Phone Company on November 3, 2000 and was switched back to her previous providers on December 4, 2000. Her local service was again switched to The Other Phone Company on February 16, 2001 and back to her previous provider on March 15, 2001. Her local toll and long distance service was switched to The Other Phone Company on February 16, 2001 and switched back to her previous providers on March 14, 2001.

service resulting in a total of one hundred and ten (110) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 30:** Talk.com issued a promotional check that failed to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56 as described above.

## **II. Telephone Solicitations**

Many of the slamming complaints filed with the CSD arise from Talk.com's solicitation of Tennessee consumers through telemarketing efforts. The CSD's preliminary investigation indicates that the telephone solicitation and verification scripts used in Tennessee by Talk.com during the time period in which most of the complaints arose fail to comply with Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c) and (3).<sup>21</sup> The thirteen (13) solicitation scripts (incorporated herein as Attachment I filed under seal as proprietary information.) Talk.com sent to the CSD include the following violations of Tenn. Comp. R. & Reg. 1220-4-2-.56(3):

1. All scripts fail to include "a statement that the purpose of the call is to solicit verbal approval to change the end user's local, and/or intraLATA, or interLATA carrier along with the specific question to the end user, 'do you want to change your service?'" as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(3)(b);
2. All scripts fail to provide an unsolicited disclosure describing "any charge(s) for processing the carrier change that may be imposed by the customer's local exchange carrier" as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(3)(d);
3. All scripts fail to include a disclosure that "the end user's local, intraLATA, or interLATA carrier may not be changed unless and until the telemarketing sale is confirmed by at least one of the methods outlined in [Tenn. Comp. R. & Reg.

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<sup>21</sup> In response to a CSD document request, Talk.com submitted twelve (12) solicitation scripts and fifty-four (54) verification scripts used in Tennessee. In February 2001, Talk.com stated that its outside telemarketers had used these solicitation scripts in Tennessee over the past few months. Talk.com also stated that the verification scripts it submitted to the CSD had been used in Tennessee over the past ten (10) months. Since March 2001, Talk.com purportedly has changed the scripts it uses in Tennessee.

These solicitation and verification scripts may indicate that Talk.com "has followed a pattern of continued violation of Tenn. Code Ann. § 65-4-125(a)" or the rules promulgated thereto. *See* Tenn. Comp. R. & Reg. 1220-4-2-.56(10)(c). Penalties are not contemplated for Talk.com's general use of these noncompliant scripts. In certain Counts included in this Order, however, Talk.com is being directed to show cause why penalties should not be imposed for specific violations of Tenn. Comp. R. & Reg. 1220-4-2-.56(2) or (3) which may be revealed through tape recorded verifications obtained during the investigation of the individual complaints.

1220-4-2-.56](2)(a-c)” as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(3)(c);

4. All scripts fail to include an unsolicited disclosure of the “time frame when the change will occur” as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(3)(f);
5. All scripts fail to include a “verification that the end user is an authorized individual” as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(3)(g);

The fifty-four (54) verification scripts (incorporated herein Attachment II filed under seal as proprietary information.) Talk.com sent to the CSD include the following violations of Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1):

1. All scripts fail to disclose the “company name of the independent third party verifier” as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i).
2. All scripts fail to “[r]equest whether the end user would like to verify his/her decision to switch service at the present time or wait until a later time” as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(ii).
3. All scripts fail to disclose “the approximate time frame in which the change will occur” as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(vi).
4. All scripts fail to include a “statement at the end of the conversation confirming that a request will or will not be submitted to the end user’s LEC to change his or her preferred local exchange service provider, PIC or LPIC” as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(viii).

The consumer complaints of slamming arising from noncompliant telemarketing solicitation and verification procedures are as follows:

16. Joe and Rose Matthews d/b/a Matthews Towing and Car Care Center of 3995 Raleigh Millington Rd, Memphis, Tennessee, filed a complaint with the CSD on October 24, 2000 (File No. 00-2039), alleging that service for their four telephone lines had been switched to Access One without authorization.<sup>22</sup> The CSD provided Access One Communications (“Access One”) with a Notice of Alleged Violation and a copy of the complaint on October 24, 2000.

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<sup>22</sup> The CSD’s preliminary investigation indicates that the local, local toll and long distance service on all four lines for Matthews Towing & Car Care Center were switched from BellSouth to The Other Phone Company on March 15, 2000 and were switched back to the former providers on August 23, 2000.

In response to the complaint, Access One states that Rose Matthews authorized the conversion of two lines to Access One on January 31, 2000, in a tape recorded verification. The tape does not specify any of the numbers to be switched. Access One has not responded to the allegations regarding the switching of the third and fourth lines without the Matthews' permission, which are the basis of Count 33. (The Matthews' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 16).

**COUNT 31:** Talk.com provided unauthorized local service to the Matthews on two (2) of the four (4) lines for one hundred and sixty-one (161) days resulting in three hundred and twenty-two (322) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 32:** The tape recorded verification violates Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i), (ii), (vi) and (viii) as described above.

17. Pam Downen of 130 Brints Chapel Lane, Middleton, Tennessee, filed a complaint with the CSD on October 30, 2000, alleging that her local toll service had been switched to Talk.com without authorization.<sup>23</sup> (File No. 00-2082). Ms. Downen asserts that she authorized a switch of her long distance service to Talk.com in January 2000 so long as it did not interfere with her area wide calling, but Talk.com switched both her local toll and long distance service, which disrupted her area wide calling. Ms. Downen alleges that she cancelled Talk.com's service on January 27, 2000; however, Talk.com switched only her long distance service back to her preferred provider. She learned this fact when Talk.com continued to bill her for local toll service after she cancelled the long distance service. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on November 1, 2000.

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<sup>23</sup> The CSD's preliminary investigation indicates that Pam Downen's local toll and long distance service was switched to Talk.com on January 14, 2000 and was switched back to her former providers on April 11, 2000.

In response to the complaint, Talk.com states that "Pam Downen authorized the conversion of her local toll and long distance service through ADC, a third party verification company." On the verification tape, Pam Downen authorized only the conversion of her long distance service. With the assistance of CSD, Talk.com purportedly credited the amount billed to Pam Downen's account. (Pam Downen's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 17).

**COUNT 33:** Talk.com provided unauthorized local toll and long distance service to Pam Downen for eighty-eight (88) per each service resulting in a total of one hundred and seventy-six (176) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 34:** The tape recorded verification violates Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i), (ii), (vi) and (viii) as described above.

18. Dorothy Curvin of 11281 McGill Rd., Soddy Daisy, Tennessee, filed a complaint with the CSD on November 15, 2000 (File No. 00-2185), alleging that Talk.com switched her telephone service from BellSouth without authorization.<sup>24</sup> Dorothy Curvin asserts that she authorized Talk.com to switch her long distance service on July 18, 2000, but her local service was switched to Talk.com without authorization. Ms. Curvin states she switched her local, local toll and long distance service back to BellSouth on September 1, 2000. In addition, Ms. Curvin asserts that Talk.com then switched her local toll and long distance service a second time in November 2000 without her authorization. At the time she filed her complaint, Talk.com contended that it had released her line, BellSouth stated the line was not released and Dorothy

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<sup>24</sup> The CSD's preliminary investigation indicates that Dorothy Curvin's local service was switched to The Other Phone Company on July 16, 2000 and was returned to BellSouth on November 16, 2000. Her local toll and long distance service was switched to The Other Phone Company on July 15, 2000 and was switched back to her preferred carriers on August 31, 2000. These two services were switched a second time without authorization on November 9, 2000 and back on November 14, 2000.

Curvin had no local service. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on November 15, 2000.

In response to the complaint, Talk.com states:

Dorothy Curvin authorized the conversion of her local and long distance service through ADC, a third party verification company. Her service began 7/00 and she returned to BellSouth in 9/00. Dorothy Curvin's telephone number was provisioned again in 11/00 in error, when this record was applied as a duplicate and failed to be recognized as such.

The third party verification tape shows that when Dorothy Curvin specifically asked whether her local service would remain with BellSouth, the verifier ignored the question. With the assistance of CSD, Talk.com purportedly credited Dorothy Curvin with the amount billed. (Dorothy Curvin's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 18).

**COUNT 35:** Talk.com provided unauthorized local service to Dorothy Curvin for one hundred and twenty-three (123) days, unauthorized local toll service on two (2) separate occasions for a total of fifty-two (52) days and unauthorized long distance service for five (5) days resulting in a total of one hundred and eighty (180) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 36:** The tape recorded verification violates Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i), (ii), (vi) and (viii) as described above.

19. Laura Wilson of 15 Bluff Creek Trail, Soddy Daisy, Tennessee, filed a complaint with the CSD on December 6, 2000 (File No. 00-2321), alleging that her telephone service had been switched to Talk.com without authorization.<sup>25</sup> Ms. Wilson states that after a Talk.com sales representative called her in September 2000 and persuaded her to switch her long distance

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<sup>25</sup> The CSD's preliminary investigation indicates that Laura Wilson's local service was switched to Talk.com on September 12, 2000 and was switched back to Bledsoe Telephone Cooperative on November 9, 2000.

service, she responded by requesting a written price list so she could compare the cost. Ms. Wilson asserts that she learned that her long distance had been switched when she got her phone bill. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on December 6, 2000.

In response to the complaint, Talk.com states "Our records indicate that an outside marketing firm has solicited and obtained a verification for the conversion of this customer's long distance service to Talk.com. However, we are in litigation with this firm and are unable to retrieve the verification at this time." With the assistance of CSD, Talk.com purportedly issued a credit to Laura Wilson for the amount owed. (Laura Wilson's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 19).

**COUNT 37:** Talk.com provided unauthorized local service to Laura Wilson for fifty-eight (58) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 38:** Talk.com Failed to maintain for one (1) year a recording verifying the change order that purportedly authorized Talk.com to convert the service of Laura Wilson and failed to produce said recording upon the request of the CSD as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(e).

20. Jeanette Deming of 124 Roseland Hill Rd., Brighton, Tennessee, filed a complaint with the CSD on December 11, 2000, alleging that her local telephone service had been switched to Talk.com without authorization.<sup>26</sup> (File No. 00-2381). Ms. Deming states that she had authorized a switch to Talk.com in July of 2000 and switched back to BellSouth on August 17,

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<sup>26</sup> The CSD's preliminary investigation indicates that Jeanette Deming local service was first switched from BellSouth to The Other Phone Company on July 16, 2000 and was switched back on July 16, 2000. Her local service was again switched from BellSouth to The Other Phone Company on September 25, 2000 and was switched back on November 22, 2000. Her local toll and long distance service was switched to The Other Phone Company on November 20, 2000 and was switched to her preferred providers on January 25, 2001.



2000. Ms. Deming alleges that on September 25, 2000 Talk.com switched her service a second time without her knowledge or consent. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on December 14, 2000.

In response to the complaint, Talk.com states that "Jeanette Deming authorized the change in service through third party verifications on June 23, 2000. Due to a file processed in error, Jeanette Deming's telephone number was placed on the service a second time after her initial cancellation." With the assistance of CSD, Talk.com purportedly mailed Jeanette Deming a check in the amount of \$200.48 representing the amount in dispute. (Jeanette Deming's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 20).

**COUNT 39:** Talk.com provided unauthorized local service to Jeanette Deming for fifty-eight (58) days and unauthorized local toll and long distance for sixty-six (66) days per each service resulting in a total of one hundred and ninety (190) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 40:** The tape recorded verification violates Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i), (ii), (vi) and (viii) as described above.

21. John Selkirk of 9125 Wren Hill Drive, Lakeland, Tennessee, filed a complaint with the CSD on January 3, 2001 (File No. 01-0028), alleging that his telephone service had been switched to Talk.com without authorization.<sup>27</sup> Mr. Selkirk's affidavit states that a Talk.com representative called him in July 2000 and he agreed to switch his service, so long as he received all the features he had with BellSouth. Mr. Selkirk states that a week later, Talk.com called again to inform him that it was unable to provide all the features he had previously enjoyed and

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<sup>27</sup> The CSD's preliminary investigation indicates that John Selkirk's local toll and long distance service was switched to The Other Phone Company on November 14, 2000 and was switched back on December 27, 2000.

he withdrew his consent to switch his service. Nevertheless, Talk.com converted his service approximately four (4) months after he withdrew his consent. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 3, 2001.

In response to the complaint Talk.com states, "John Selkirk authorized the conversion of his local and long distances [sic] service to Talk.com through a third party verifier on July 18, 2001 . . . However, due to a delay in the provisioning of the telephone number, the order did not complete until November 16, 2000." With the assistance of CSD, Talk.com purportedly issued a credit to John Selkirk for the amount owed. (John Selkirk's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 21).

**COUNT 41:** Talk.com provided unauthorized local toll and long distance service to John Selkirk for forty-three (43) days per each service resulting in eight-six (86) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 42:** The tape recorded verification violates Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i), (ii), (vi) and (viii) as described above.

22. Gary Butler of 765 McMurray Dr., Apt. M-10, Nashville, Tennessee, filed a complaint with the CSD on January 9, 2001 (File No. 01-0089), alleging that Talk.com had switched his local and long distance telephone service without authorization. Mr. Butler asserts that he initially consented to service with Talk.com in the summer of 2000. However, according to Gary Butler, shortly thereafter, his long distance service ceased to operate and Talk.com customer service could not resolve his complaints. Gary Butler asserts that he reconnected with his prior providers, BellSouth and AT&T, and was billed by them; however, his service was then

cut off and he learned that Talk.com had reprovisioned his service without authorization.<sup>28</sup> Gary Butler alleges that Talk.com informed him that his account was not active because he owed Talk.com money. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 11, 2001.

In response to the complaint, Talk.com states that "Our records indicate that Gary Butler authorized the conversion of his telephone service to Talk.com through third party verification." Talk.com did not address the second, unauthorized switch. Count 45 is premised upon this second switch only. (Gary Butler's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 22).

**COUNT 43:** Talk.com provided unauthorized local toll and long distance service to Gary Butler for sixty (60) days per service resulting in a total of one hundred and twenty (120) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 44:** The July 7, 2000 tape recorded verification violates Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i), (ii), (vi) and (viii) as described above.

23. Janet Elizabeth Clare of 3211 Highway 411, Madisonville, Tennessee, filed a complaint with the CSD on February 14, 2001 (File No. 01-0373), alleging that her telephone service had been switched to Talk.com without authorization.<sup>29</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on February 14, 2001.

In response to the complaint, Talk.com states that:

Janet Elizabeth Clare attempted to authorize the conversion of her local and long distance service to Talk.com through third party verifications on December 8, 2000. However, at the conclusion of the verification Janet Elizabeth Clare

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<sup>28</sup> The CSD's preliminary investigation indicates that Gary Butler initially authorized the switch on July 7, 2000. His Talk.com service was cancelled on November 2, 2000. Gary Butler's local toll and long distance service was switched to The Other Phone Company on November 9, 2000 and was switched back to his preferred providers on January 8, 2001.

<sup>29</sup> The CSD's preliminary investigation indicates that Janet Clare's local service was switched to The Other Phone Company on January 12, 2001 and was switched back to BellSouth on January 25, 2001.

requested to cancel the order and at that time the order should have been voided. Due to an error on the part of ADC verifications, the order was processed causing Janet Elizabeth Clare to be switched in error.

(Janet Clare's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 23).

**COUNT 45:** Talk.com provided unauthorized local service to Janet Clare for thirteen (13) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 46:** Talk.com Failed to maintain for one (1) year a recording verifying the change order that purportedly authorized Talk.com to convert the service of Janet Clare and failed to produce said recording upon the request of the CSD as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(e).

24. On March 19, 2001, the CSD received a complaint against Talk.com from J. Wallace Harvill, a lawyer retained by Lori Turbeville of 1257 Brushy Road, Centerville, Tennessee (File No. 01-0641). The lawyer forwarded a January 16, 2001 letter written by Lori Turbeville to a collection agency hired by Talk.com to collect a debt she purportedly owed, in which she stated that her long distance telephone service had been switched to AOL Long Distance without authorization.<sup>30</sup> In the letter, Lori Turbeville explained that she had agreed to try AOL Long Distance in February of 2000 after being assured that the change in service would not affect her business line. Before consenting to the change Ms. Turbeville had informed the AOL sales person that, as a medical transcriptionist, she spent hours listening to dictation over this line and that BellSouth handled these calls for no extra charge. Lori Turbeville stated that her first bill on the new service contained a long distance charge of over \$200 to her Mastercard account. She

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<sup>30</sup> The CSD's preliminary investigation indicates that Lori Turbeville's long distance service, including her local toll service, was switched to The Other Phone Company on January 24, 2000 and switched back to the previous providers on March 27, 2000.

immediately attempted to call the new service, but was able to reach only a recording which advised her to call back when the lines were not so busy. She received this same response many times. She was able to cancel the new service by contacting BellSouth. However, her next Mastercard bill contained another charge of over \$200 for long distance service. Mastercard agreed to dispute the charges. When Lori Turbeville was finally able to contact AOL Long Distance, she received contradictory responses. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 20, 2001.

In response to the complaint, Talk.com asserts that:

Ms. Tuberville [sic] authorized the change in long distance service including local toll through third party verifications on January 16, 2000 (sending tape under separate cover). Unfortunately, Ms. Tuberville [sic] was unaware local toll calls would bill as well. As a courtesy, we have notified NCO Financial Systems to cease all collection activity and we have issued a credit in the amount of \$474.85 representing the total amount forwarded to NCO Financial Systems.

In the tape recorded verification, Lori Turbeville authorized the change in her long distance service, but was not asked to consent to a change in her local toll service. (Lori Turbeville's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 24).

**COUNT 47:** Talk.com provided unauthorized local toll service to Lori Turbeville for sixty-three (63) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 48:** The tape recorded verification violates Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i), (ii), (vi) and (viii) as described above.

25. Carol O'Gorman d/b/a Heat Transfer Solutions, L.L.C. ("HTS") of P.O. Box 30, Rockvale, Tennessee, filed a complaint with the CSD on March 21, 2001 (File No. 01-0653). Ms. O'Gorman alleges that The Other Phone Company switched HTS's local and long distance

telephone service without authorization.<sup>31</sup> Carol O’Gorman states that she discovered the switch when she unsuccessfully attempted to retrieve her voice-mail. She contacted BellSouth and was informed that it was no longer providing her local service. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 21, 2001.

In response to the complaint, Talk.com states that “Our records indicate that Mr. Tim O’Gorman authorized the change in service through third party verifications. We have requested a copy of the verification tape[;] however[,] since they have informed us that they are unable to provide a copy, we have issued a credit to the account for the total amount billed and in turn will charge back that amount to ADC Verifications Company.” (HTS’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 25).

**COUNT 49:** Talk.com provided unauthorized local service to HTS for sixty-three (63) days on two lines, unauthorized local toll service for twenty-three (23) days on two lines, and unauthorized long distance service for seventy-four (74) days on two lines resulting in a total of three hundred and twenty (320) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 50:** Talk.com Failed to maintain for one (1) year a recording verifying the change order that purportedly authorized Talk.com to convert the service of HTS and failed to produce said recording upon the request of the CSD as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(e).

26. Edith Brown of 3451 Powers Bridge Road, Manchester, Tennessee, filed a complaint with the CSD on March 22, 2001 (File No. 01-0667), alleging that her local telephone service

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<sup>31</sup> The CSD’s preliminary investigation indicates that HTS’s local service was switched to Access One on January 23, 2001 and switched back to the previous provider on March 26, 2001. HTS’s local toll and long distance service was switched on March 9, 2001. The local toll service was switched back on April 2, 2001 and the long distance service was switched back on May 23, 2001.

had been switched to Talk.com without authorization.<sup>32</sup> Ms. Brown asserts that she learned of the switch when BellSouth informed her that her service was about to be changed to Talk.com. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 23, 2001.

In response to the complaint Talk.com states "Our records indicate that Talk.com Local and Long Distance services were authorized through third party verification. Our records do not indicate that Edith Brown has been billed to date, however because ADC could not provide the verification, we will issue credit for any unbilled charges and in turn will charge ADC. (Edith Brown's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 26).

**COUNT 51:** Talk.com provided unauthorized local service to Edith Brown for one (1) day in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 52:** Talk.com failed to maintain for one (1) year a recording verifying the change order that purportedly authorized Talk.com to convert the service of Edith Brown and failed to produce said recording upon the request of the CSD as required by Tenn. Comp. R. Reg. 1220-4-2-.56(2)(e).

28. Duane and Cindi Shields of 8065 Allbright Cove, Bartlett, Tennessee, filed a complaint with the CSD on March 23, 2001 (File No. 01-0694), alleging that their local and long distance telephone service had been switched to Talk.com without authorization.<sup>33</sup> Mr. Shields states that he discovered the switch after receiving a final bill from BellSouth. The CSD

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<sup>32</sup> The CSD's preliminary investigation indicates that Edith Brown's local service was switched to The Other Phone Company on March 28, 2001 and was switched back to her preferred provider on March 29, 2001.

<sup>33</sup> The CSD's preliminary investigation indicates that Shields' local and long distance service was switched to The Other Phone Company on February 15, 2001. Their local service was switched back to the previous provider on February 15, 2001, however their local toll and long distance service was not switched to the previous providers until March 7, 2001.

provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 27, 2001.

In response to the complaint, Talk.com states "Due to a data entry error on the part of ADC Verifications, Duane Shield's [sic] telephone number was inadvertently switched to the Talk.com local and long distance service when the telephone number given during the authorization of the service was transposed." Talk.com provided the CSD with a copy of the tape recorded verification in which another individual, James White, authorized the conversion to Talk.com on (901) 385-6354. Duane Shields lost service for several days before his service was returned to his prior provider. With the assistance of CSD, Talk.com purportedly issued a credit to Duane Shields for the amount owed. (Duane Shields' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 27).

**COUNT 53:** Talk.com provided unauthorized local service to the Shields for one (1) day and unauthorized local toll and long distance service for twenty (20) days per each service resulting in a total of forty-one (41) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

28. Lisa Switter of 265 Moore Circle, N.W., Charleston, Tennessee, filed a complaint with the CSD on March 26, 2001 (File No. 01-00703), alleging that her local and long distance telephone service had been switched to Talk.com without authorization.<sup>34</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 27, 2001.

In response to the complaint, Talk.com states "Lisa Switter authorized the conversion of her local and long distance service to Talk.com through third party verifications. Unfortunately, we do not have a copy of the verification on file and have requested this from ADC

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<sup>34</sup> The CSD's preliminary investigation indicates that Lisa Switter's local and long distance service was switched to Access One on March 23, 2001 and was switched back to her previous providers on March 26, 2001.



Verifications.” With the assistance of CSD, Lisa Switter purportedly was not billed for the time her service was with Talk.com. (Lisa Switter’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 28).

**COUNT 54:** Talk.com provided unauthorized local, local toll and long distance service to Lisa Switter for five (5) days per each service resulting in fifteen (15) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 55:** Talk.com Failed to maintain for one (1) year a recording verifying the change order that purportedly authorized Talk.com to convert the service of Lisa Switter and failed to produce said recording upon the request of the CSD as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(e).

29. K. L. Owen and Carole A. Owen of 707 N. Graycroft Ave., Madison, Tennessee, filed a complaint with the CSD on April 3, 2001 (File No. 01-0785), alleging that their long distance telephone service had been switched to Talk.com without authorization.<sup>35</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 4, 2001.

In response to the complaint, Talk.com states “Our records indicate that K. L. Owen’s telephone number of 615-860-0921 was authorized through third party verifications. To this date Talk.com was unsuccessful in its attempt to obtain a copy of the tape, but will forward your office the copy as soon as it arrives.” With the assistance of CSD, Talk.com purportedly issued a credit to the Owens for the entire account balance. (K. L. Owen’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 29).

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<sup>35</sup> The CSD’s preliminary investigation indicates that the Owens’ local, local toll and long distance service was switched to Talk.com on August 1, 2000. Their local service was switched back to the previous provider on September 17, 2000, and their local toll and long distance service was switched back to the previous providers on September 18, 2000.

**COUNT 56:** Talk.com provided unauthorized local service to K. L. Owen for forty-seven (47) days and unauthorized local toll and long distance service for forty-six (46) days resulting in one hundred and forty-three (143) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 57:** Talk.com Failed to maintain for one (1) year a recording verifying the change order that purportedly authorized Talk.com to convert the service of K. L. Owen and failed to produce said recording upon the request of the CSD as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(e).

30. John Montgomery d/b/a John Montgomery Insurance Agency of 810 State Street, Knoxville, Tennessee, filed a complaint with the CSD on April 19, 2001 (File No. 01-0918), alleging that Access One switched his telephone service on November 15, 2000 without authorization.<sup>36</sup> Mr. Montgomery asserts that as soon as he discovered the switch, he converted his service back to BellSouth. Upon receiving a bill from Access One for \$32.54 in January 2001, John Montgomery states that he contacted Access One and was assured that his bill would be “zeroed” out. However, on February 5, 2001 he received two “Past Due” notices from Access One. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 19, 2001.

In response to the complaint, Talk.com states:

On November [sic] 2000, Talk.com updated numerous resale accounts to our Unbundled Network Element (UNE) platform including John Montgomery Insurance Agency. As Talk.com was unaware that the John Montgomery Insurance Agency was switched to BellSouth as his new carrier on October 30<sup>th</sup>, John Montgomery’s business was switched back to Talk.com again when the account was updated on November 16, 2000. When the John Montgomery Insurance Agency telephone services were switched back to Talk.com again, a secondary account was created in error, resulting in two (2) accounts for the John Montgomery Insurance Agency.

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<sup>36</sup> The CSD’s preliminary investigation indicates John Montgomery Insurance Agency’s local service was switched to The Other Phone Company on November 15, 2000 and switched back to BellSouth on December 11, 2000.

With the assistance of CSD, Talk.com purportedly deactivated the two accounts and issued a credit to the John Montgomery Insurance Agency for the entire account balance. (The John Montgomery Insurance Agency's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 30).

**COUNT 58:** Talk.com provided unauthorized local service to John Montgomery Insurance Agency for twenty-six (26) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

### **III. Miscellaneous Slamming Violations**

The following consumer complaints arose from circumstances not solely related to promotional checks and telephone solicitations which failed to comply with Tennessee laws and regulations:

31. Judy Beasley, on behalf of Beasley Antenna & Satellite of 1801 Bell Avenue, Paris, Tennessee, filed a complaint with the CSD on December 28, 2000 (File No. 00-2469), alleging that Talk.com had switched her local telephone service from BellSouth without authorization.<sup>37</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 2, 2001.

In response to the complaint, Talk.com states that "Talk.com never submitted an order for Judy Beasley's telephone numbers to be on our service. We believe that the billing could have been from the use of our dial around access code or that our Carrier Identification Code (CIC) was selected as the Primary Interexchange Carrier (PIC) Local Exchange Carrier." Witnesses from BellSouth assert that on October 2, 2000 an order was issued to switch the customer's local

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<sup>37</sup> The CSD's preliminary investigation indicates that Beasley Antenna & Satellite's local service was switched from BellSouth to The Other Phone Company on October 2, 2000 and was switched back to BellSouth on October 9, 2000 at Ms. Beasley's request.

service to "The Other Phone Company." With the assistance of CSD, Talk.com purportedly credited Judy Beasley with the amount billed. (Judy Beasley's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 31).

**COUNT 59:** Talk.com provided unauthorized local service to Judy Beasley for seven (7) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

32. Janice Keenan of 414 West Ridgecrest Dr., Kingston, Tennessee, filed a complaint with the CSD on January 29, 2001 (File No. 01-0250), alleging that her local telephone service had been switched to Talk.com without authorization.<sup>38</sup> Ms. Keenan asserts that during a call to AOL for technical support, she agreed to a special long distance promotion in which she was offered 250 minutes of free long distance per month and a \$50 check. She attests that the check was on a postcard that did not include the name or address of the issuing company or any other identifying features. Ms. Keenan states that she realized her local telephone service had been switched after receiving a bill which included features such as call forwarding, call waiting and caller identification, which she had not previously ordered. After she called to cancel, Talk.com sent her another promotional check, which she did not cash. She was without service (except for 911) for two days before being switched back to her previous local and long distance service. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 30, 2001.

In response to her complaint, Talk.com states:

Our records show that the signing and cashing of a promotional check that was sent in August 2000 authorized the change to Talk.com local and long distance service. We have requested a copy of the check from the bank however they were not able to provide this to us due to the [sic] being damaged. Our records do

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<sup>38</sup> The CSD's preliminary investigation indicates that Janice Keenan's local service was switched to Access One on November 14, 2000. Her local toll service was switched to Access One on October 18, 2000. Both services were switched back to the previous providers on December 18, 2000.

reflect that Mrs. Keenan called our customer service department on December 17, 2000 inquiring about the charges. On December 18, 2000 Mrs. Keenan called to cancel and said that the plan was too expensive. Ms. Keenan called on December 19, 2000 to inform us that she is switching back to BellSouth and does not want service with Talk.com.

Talk.com also stated, "On February 2, 2000 Janice Speer Keenan authorized the change [sic] long distance service through third party verifications." Mrs. Keenan does not dispute that she authorized the change in long distance service, but denies that she authorized the change in her local service. The tape recorded verification of July 26, 2000 confirms that her authorization was limited to the change in long distance service. With the assistance of the CSD, Talk.com purportedly refunded the amount paid on the account and issued a credit for unbilled charges. (Janice Keenan's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 32).

**COUNT 60:** Talk.com provided unauthorized local service to Janice Keenan for thirty-five (35) days and unauthorized local toll for thirty-one (31) resulting in a total of sixty-six (66) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 61:** The tape recorded verification violates Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1)(i), (ii), (vi) and (viii) as described above.

33. Michael Foster of 223 Western Avenue, Lebanon, Tennessee, filed a complaint with the CSD on March 27, 2001 (File No. 01-0724), alleging that Talk.com had switched his long distance telephone service without authorization.<sup>39</sup> Mr. Foster asserts that he initially authorized the switch, but cancelled after Talk.com failed to honor the rate promised to him. Mr. Foster states shortly thereafter his service was switched a second time to Talk.com, this time without his

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<sup>39</sup> The CSD's preliminary investigation indicates that Michael Foster's local was switched a second time to Talk.com without authorization on February 26, 2001. His local service was switched back to his preferred provider on March 10, 2001.

authorization. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 28, 2001.

In response to the complaint, Talk.com states that, "Mr. Michael Foster authorized the change in local and long distance service through third party verifications. Unfortunately, Michael Foster's telephone number was submitted a second time in error due to the fact that the original order submitted as a conversion had not yet been removed from the database." With the assistance of CSD, Talk.com purportedly credited Michael Foster for the amount billed. (Michael Foster's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 33).

**COUNT 62:** Talk.com provided unauthorized local service to Michael Foster for a total of twelve (12) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

34. Lenore Wilson of 154 North Ridge Drive, Parotsville, Tennessee filed a complaint with the CSD on April 27, 2001 (File No. 01-0971), alleging that Talk.com had switched her local and long distance telephone service without authorization.<sup>40</sup> According to Lenore Wilson, during a telephone call to BellSouth, she learned that her service was scheduled to be switched to Talk.com on April 3, 2001. Lenore Wilson asserts that she then called Talk.com and advised the representative that she did not desire a change in her service. Nevertheless, Talk.com switched her service. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 27, 2001.

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<sup>40</sup> The CSD's preliminary investigation indicates that Lenore Wilson's local toll and long distance service was switched to Talk.com without authorization on March 8, 2001 and was switched back to the previous providers on April 20, 2001. Ms. Wilson's local service was also switched to Talk.com on March 8, 2001, however she was not switched back to BellSouth until April 23, 2001.

In response to the complaint, Talk.com states that, "Our records indicate Mr. [sic] Wilson authorized the change to Talk.com local and long distance through a third party verifier in February 2001. Since ADC Verifications cannot provide the verification tape, we have issued a credit to the account . . . ." (Lenore Wilson's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 34).

**COUNT 63:** Talk.com provided unauthorized local toll and long distance service to Lenore Wilson for forty-three (43) days per each service and unauthorized local service for forty-six (46) days resulting in a total of one hundred and thirty-two (132) days in violation of Tenn. Code Ann. § 65-4-125(a) and Tenn. Comp. R. & Reg. 1220-4-2-.56.

**COUNT 64:** Talk.com failed to maintain for one (1) year a recording verifying the change order that purportedly authorized Talk.com to convert the service of Lenore Wilson and failed to produce said recording upon the request of the CSD as required by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(e).

**COMPLAINTS ALLEGING VIOLATIONS OF TENN. CODE ANN. § 65-4-125(b):**

**CRAMMING**

The following consumer complaints arose when Talk.com or persons acting on its behalf, billed and/or collected from Tennessee subscribers charges for services to which the provider or persons acting on behalf of the provider knew or reasonably should have known such subscriber had not subscribed or for an amount in excess of that specified in the tariff or contract governing the charges for such services in violation of Tenn. Code Ann. § 65-4-125(b).

35. Patricia Ladisa of 7033 North Lake Drive, Brentwood, Tennessee, filed a complaint with the CSD on December 29, 2000 (File No. 00-2463), alleging that Talk.com breached its promise to provide her with local and long distance telephone service in a bundled plan with unlimited local calling and two-hundred (200) free minutes of long distance each month for a cost of \$49.95 per month. Ms. Ladisa asserts that after Talk.com failed to timely convert her service, she cancelled the order for service on September 22, 2000. Shortly thereafter, she received e-mail from Talk.com welcoming her to its service. Ms. Ladisa states that she cancelled the order for the service once again, but received another welcome e-mail from Talk.com, to which she responded that the order had been cancelled. Ms. Ladisa alleges that she then received a bill from Talk.com for \$88.20. This bill included charges for local calls and did not include the two hundred (200) free minutes of long distance calling she was promised. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on December 29, 2000.

In response to the complaint, Talk.com stated that Matthew Ladisa authorized the conversion of local and long distance service when he signed and cashed a promotional check for \$50.00. The response from Talk.com did not address the Ladisas' previous attempts to cancel the service prior to its initiation. In order to resolve the complaint, Talk.com allegedly credited



\$88.20 for the total amount billed on the account. (Patricia Ladisa's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 35).

**COUNT 65:** Talk.com billed Patricia Ladisa for services which had been previously cancelled an amount in excess of that specified in the agreement governing the charges for such services. The alleged violation, which occurred between September 22, 2000 and January 12, 2001, has resulted in at least one hundred and twelve (112) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

36. Bruce Efflandt of 1771 Wears Valley Road in Sevierville, Tennessee, filed a complaint with the CSD on January 1, 2001 (File No. 01-0063), alleging that Talk.com continued to bill his credit card after he cancelled its service. Mr. Efflandt asserts that not only was \$28.41 charged to his credit card, he also received a paper bill. Mr. Efflandt states that after more than one attempt to rectify the improper billing, he was assured on November 7, 2000, that the error would be corrected within seven (7) to fourteen (14) days. However, as of January 6, 2001, Talk.com had continued to bill his credit card on the original account and send paper bills on the closed account. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 8, 2001.

In response to the complaint, Talk.com states that in July 1998, Mr. Efflandt's telephone number, 423-428-6001, was authorized and began billing on its service. Talk.com asserts that in February 2000 it received notification from the local exchange carrier that Mr. Efflandt was moving and had selected Talk.com as his preferred carrier. Talk.com states that in June of 2000 "[t]here was an area code change (423 to 865) that inadvertently established a new account for the 'new' telephone number of 865-428-6001, which began to generate and send a paper

statement [to Mr. Efflandt] for remittance.” Notwithstanding the billing on the “new” account, Talk.com continued to bill the “old” telephone number of 423-428-6001 for monthly service fees because the cancellation notice was only for the new telephone number of 865-428-6001. Talk.com purportedly issued a refund of \$59.07 for charges erroneously billed on the old account after Mr. Efflandt cancelled the service. (Bruce Efflandt’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 36).

**COUNT 66:** Talk.com billed and collected amounts on Bruce Efflandt’s credit card after services were cancelled. The alleged violation, which occurred between August 20, 2000 and January 22, 2001, has resulted in at least one hundred and fifty-six (156) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

37. Mrs. DeLouis Greer-Carrithers filed a complaint on behalf of her mother, Mrs. Lillian Greer of 1234 Meda Street, Memphis, Tennessee, on January 10, 2001 (File No. 01-0107), alleging that Talk.com failed to honor its offer of savings on her mother’s local telephone service. Mrs. Greer-Carrithers alleged that her mother cancelled her service with Talk.com after realizing that the same services that she had with BellSouth were not available. Talk.com cancelled its service before BellSouth could reinstate Mrs. Greer’s service, leaving her with no service for approximately five (5) days. Mrs. Greer stated that she eventually received a bill from Talk.com for \$67.49, which she mistakenly paid. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 12, 2001.

In response to the complaint, Talk.com stated that Mrs. Greer cancelled her local service with Talk.com in August 2000, but “due to a timing difference, the order to deactivate Lillian Greer’s billing was not completely processed at the time the account was cancelled, causing Ms.

Greer to be billed in error.” In order to resolve the complaint, Talk.com purportedly refunded the entire amount. (DeLouis Greer-Carrithers’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 37).

**COUNT 67:** Talk.com billed and collected amounts from Lillian Greer for services not provided. The alleged violation, which occurred between July 31, 2000 and January 24, 2001, has resulted in at least one hundred and seventy-eight (178) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

38. Doris Moore of 10464 Hwy 104 North, Lexington, Tennessee, filed a complaint with the CSD on January 12, 2001 (File No. 01-0117), alleging that after she authorized Talk.com to provide her with service in July 2000, she began receiving bills immediately but her service was not activated, notwithstanding Talk.com’s promise to convert her service by August 10, 2000. Ms. Moore states she made numerous calls to Talk.com to remedy the billing problem, but the bills continued until she filed a complaint with the CSD. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 12, 2001.

In a June 22, 2001 response to the complaint, Talk.com states that “our records show that the provisioning side of the order for local service was rejected and never completed, but the billing order did complete in error.” After being contacted by the CSD Talk.com purportedly issued a credit in the amount of \$203.70, representing the amount billed. (Doris Moore’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 38).

**COUNT 68:** Talk.com billed Doris Moore for services not provided. The alleged violation, which occurred between August 10, 2000 and June 22, 2001, has resulted in at least

three hundred and seventeen (317) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

39. Tim and Leah Sweeney of 2220 Monte Bella Place, Franklin, Tennessee, filed a complaint with the CSD on January 19, 2001 (File No. 01-0172), alleging that Talk.com continued to debit their checking account after they had cancelled its service. The Sweeneys state that they cancelled their service with Talk.com due to confusing billing, no consistency between the statements mailed to them and the amounts deducted from their checking account and poor service. Although they attempted to cancel their service with Talk.com on September 21, 2000 and October 23, 2000, their service with BellSouth did not resume until November 21, 2000. However, Talk.com continued to charge the Sweeneys through December 2000, debiting their checking account \$25.93 and \$24.52 on December 12, 2000, and \$51.86 and \$49.04 on December 29, 2000. After numerous calls, Talk.com refunded the two debits from December 12, 2000. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 19, 2001.

In a January 31, 2001 response to the complaint, Talk.com states:

Leah Sweeney requested to cancel her Service with Talk.com in October 2000. At that time we would have advised Ms. Sweeney to contact her carrier of choice to place an order for new service. However, our records indicate her telephone numbers continued to bill until November 20, 2000. Ms. Sweeney indicated that she will be faxing us a Daily Accounts Summary from her financial institution to reflect all charges incurred that have been paid. Upon receipt of this summary, we will issue a refund to the method of payment on file in the amount to \$100.90, representing the charges billed after the initial request to cancel.

In a June 19, 2001 letter, Talk.com informed Ms. Sweeney that "the Talk.com account is no longer billing and has been closed with a zero balance. In order to resolve this amicably, a refund in the mount of \$151.36 has been issued to the method of payment on file."

On August 7, 2001, the CSD informed Talk.com that "as of this date, the two debits of December 29, 2000 in the amount of \$100.90 have not been returned to the consumers." The CSD requested that Talk.com indicate within ten (10) days when the Sweeneys should expect to receive the remainder of the funds owed to them by Talk.com.

Notwithstanding this request, Talk.com did not respond until August 28, 2001. It stated:

Our records indicate that a refund was issued to Mr. Sweeney's checking account on June 21, 2001, in the amount of \$151.36. However, the amount was returned due to a processing error on June 22, 2001. It appears that the representative who processed the refund did not add the routing numbers of Mr. Sweeney's account number, causing the transaction to be returned. Upon report of the problem from our financial institution, we re-processed the refund, which was again issued on August 7, 2001.

(The Sweeney's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 39).

**COUNT 69:** Talk.com billed and collected for services that had previously been cancelled by Tim and Leah Sweeney. The alleged violation, which occurred between November 21, 2000 and August 8, 2001, has resulted in at least two hundred and sixty-one (261) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

40. Marjorie Rainey of 5620 Granny White Pike, Brentwood, Tennessee, filed a complaint with the CSD on January 22, 2001 (File No. 01-0177), alleging that Talk.com breached its promise to provide her with local and long distance service at a rate of \$49.95 per month for unlimited local calls, 200 free long distance minutes per month, call waiting, caller identification, and voice mail. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on January 22, 2001.

In response to the complaint, Talk.com states that Mrs. Rainey was billed for a feature that she did not wish to have on her line. Talk.com, however, did not identify the feature to

which it referred. After the CSD commenced this investigation Talk.com purportedly issued two credits, one in the amount of \$226.00 and another in the amount of \$314.38, which represented the disputed amount. (Marjorie Rainey's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 40.)

**COUNT 70** Talk.com billed and collected amounts from Marjorie Rainey for an amount in excess of that specified in the agreement governing the charges for such services. The alleged violation, which occurred between December 28, 2000 and February 5, 2001, has resulted in at least thirty-nine (39) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

41 Fred Parish of Mid-Town Video, 3081 Roane State Hwy, Harriman, Tennessee, filed a complaint with the CSD on February 6, 2001 (File No. 01-0313), alleging that Talk.com billed him for services not authorized or provided. Mr. Parish states that after receiving a bill dated December 27, 2000 from Talk.com in the amount of \$69.31, he unsuccessfully attempted to reach Talk.com and then contacted BellSouth to inquire about the status of his account. Mr. Parish alleges that after BellSouth informed him that neither his long distance nor his local service had been changed, he filed a complaint with the CSD. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on February 6, 2001.

In a February 20, 2001 response to the complaint, Talk.com states:

Talk.com may have sold long distance service to Direct Network Services (DNS), which may have resold the service to the consumer, but Talk.com is not the consumer's long distance carrier. Only DNS has the ability is [sic] an independent company not owned or controlled by Talk.com. Therefore this complaint would need to be directed to Direct network Services.

In response to inquiry from the CSD, BellSouth confirmed that neither the long distance nor local toll service had been changed on this account. The CSD contacted Talk.com a second

time on July 16, 2001 inquiring why Talk.com continued to bill Fred Parish, when he was not a Talk.com customer and why Talk.com had not issued a credit. As of the date of the issuance of this order, the CSD has not received a response from Talk.com. (Fred Parish's complaint, the CSD's notification and Talk.com's February 20, 2001 response are attached hereto as collective Exhibit 41).

**COUNT 71:** Talk.com billed Mid-Town Video for services not authorized or provided. The days of violation cannot presently be calculated due to Talk.com's lack of response to the CSD's inquiries.

42. Lisan Parker of 3600 Hillsboro Rd, Nashville, Tennessee, filed a complaint with the CSD on March 19, 2001 (File No. 01-0499), alleging that Talk.com continued to bill her after she cancelled its service. Ms. Parker states she attempted to cancel her service with Talk.com after less than one (1) month. She states she called Talk.com at least six (6) times to cancel, but continued to receive bills until February 27, 2001. In addition, she alleged that Talk.com billed her for a Premier Plan in the amount of \$3.95, which Ms. Parker asserts she never ordered or authorized. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on February 28, 2001.

In response to the complaint, Talk.com states that "due to a timing difference, the order to deactivate Ms. Parker's billing was not completely processed at the time the account was cancelled, causing her to be billed in error." After CSD's intervention, Talk.com purportedly issued credit in the amount of \$292.48 and sent a refund check for \$56.51. (Lisan Parker's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 43).

**COUNT 72:** Talk.com billed and collected amounts from Lisan Parker for an amount in excess of that specified in the agreement governing the charges for such services. The alleged

violation, which occurred between August 21, 2000 and March 14, 2001, has resulted in at least two hundred and six (206) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

43. Carolyn Keay of 11614 Holly Circle, Soddy Daisy, Tennessee, filed a complaint with the CSD on March 20, 2001 (File No. 01-0636), alleging that Talk.com breached its promise to provide her with a local and long distance bundled telephone plan that would include two hundred (200) free minutes of long distance calls and unlimited local calls each month. Mrs. Keay states she received her first bill from Talk.com three (3) months after her service commenced. Mrs. Keay alleges that the bill did not include the two hundred (200) minutes of free long distance or free local calls. Mrs. Keay states the bills were charged to her credit card and she found it difficult to get Talk.com to stop charging her credit card. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 20, 2001.

In response to the complaint, Talk.com states that, “[d]ue to a provisioning error, Mrs. Keay’s local toll calls billed at a per minute rate. . . [also she] was not placed on the correct calling plan, which resulted in her not receiving the 200 minutes of free long distance per month.” Talk.com also asserts that she was not billed for three months of local line and features charges in error. After Mrs. Keay filed a complaint with CSD, Talk.com purportedly issued credit in the amount of \$302.07, purportedly representing the local toll calls that were billed in error. (Carolyn Keay’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 43).

**COUNT 73:** Talk.com billed and collected from Carolyn Keay for an amount in excess of that specified in the agreement governing the charges for such services. The alleged violation, which occurred between July 17, 2000 and April 3, 2001, has resulted in at least two hundred



and sixty-one (261) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

44. J. Wallace Harville, an attorney, filed a complaint with the CSD on March 19, 2001, on behalf of his client, Lori Turbeville of 1257 Brushy Rd., Antioch, Tennessee (File No. 01-0641). The complaint alleges that Talk.com breached its promise to provide Ms. Turbeville with two-hundred (200) free minutes of long distance services and three (3) months of free AOL Internet service.<sup>41</sup> The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 20, 2001.

In response to the complaint, Talk.com offered no explanation as to why Ms. Turbeville did not receive the two-hundred (200) free minutes of long distance or the three (3) free months of AOL Internet Service that she was promised. (Lori Turbeville's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 44).

**COUNT 74:** Talk.com billed and collected amounts from Lori Turbeville's Mastercard account for an amount in excess of those to which she had subscribed and continued to do so after the service was cancelled. The alleged violation, which occurred between April 4, 2000 and March 3, 2001, has resulted in at least three hundred and sixty-five (365) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

45. Andy Whitehead of 1409 Bowman Road in Knoxville, Tennessee, filed a complaint with the CSD on March 23, 2001 (File No. 01-0666), alleging Talk.com breached its promise to provide him service for a monthly charge of \$39.99 with two-hundred (200) free minutes of long distance per month. Mr. Whitehead states that after receiving his first bill, he was unsuccessful

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<sup>41</sup> Ms. Turbeville also alleges that Talk.com converted her telephone service without authorization. Her allegations of slamming begin on page 28 of this document.

in his attempts to contact Talk.com to inquire about the charges. Although he cancelled his service, Talk.com continued to bill him. When Mr. Whitehead was unable to resolve the problem with Talk.com's customer service department, Mr. Whitehead filed a complaint with the CSD. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 23, 2001.

In response to his complaint, Talk.com states that "[t]he promotional offer that Mr. Whitehead signed up for included a \$49.99 monthly fee, not a \$39.99 monthly fee. However, due to a processing error, Mr. Whitehead was billed for an additional monthly fee in the amount of \$39.05." Talk.com purportedly issued a credit in the amount of \$219.15, and demanded payment for \$214.05. (Andy Whitehead's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 45).

**COUNT 75:** Talk.com billed and collected an amount from Andy Whitehead in excess of that specified in the agreement governing the charges for such services. The alleged violation, which occurred between November 11, 2000 and March 5, 2001, has resulted in at least one hundred and fifteen (115) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

46. Charles Gerald Richardson of 335 Milbridge Drive, Antioch, Tennessee, filed a complaint with the CSD on March 19, 2001 (File No. 01-0673), alleging that Talk.com breached its promise that he would be billed no more than \$49.95 per month for its service and that Talk.com would cancel his existing service. Mr. Richardson asserts that Talk.com failed to timely cancel his existing service, which resulted in simultaneous billing by Talk.com and his other provider. In addition, Mr. Richardson alleges that Talk.com billed him in excess of \$100.00 per month and continued to bill him after he cancelled Talk.com's service. The CSD

provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 23, 2001.

In response to the complaint, Talk.com states that “[t]he promotional offer Mr. Richardson agreed to would bill a \$49.95 monthly fee to include features he utilized with his previous Local Exchange Carrier. Unfortunately, Mr. Richardson was unaware that applicable taxes would be applied to the account in addition to long distance charges over the 200 monthly free minutes that were part of the promotion.” Talk.com allegedly provided Mr. Richardson with a \$225.29 credit, leaving \$178.66 billed to his account, which was to be closed upon receipt of payment. (Charles Richardson’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 46).

**COUNT 76:** Talk.com billed and collected an amount from Charles Richardson in excess of that specified in the agreement governing the charges for such services. The alleged violation, which occurred between July 10, 2000 and April 6, 2001, has resulted in at least two hundred and seventy-one (271) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

47. Cecilia Peterson, an attorney practicing at 531 South Gay Street, Suite 100, Knoxville, Tennessee, filed a complaint with the CSD on March 26, 2001 (File No. 01-0691), alleging that after she cancelled her telephone service with Talk.com in July 2000, Talk.com continued to bill her. Ms. Peterson states she received a bill from Talk.com every month from July 2000 to March 2001. Ms. Peterson states that each time she received a bill from Talk.com, she contacted Talk.com and was assured that the problem would be resolved. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 27, 2001.

In response to the complaint, Talk.com states:

Upon reviewing Ms. Peterson's customer account records, Talk.com noticed that the customer's telephone service was disconnected with the service effective date (SED) of August 16, 2000. On February 9, 2001, Talk.com deactivated the account per the SED. On March 5, 2001, a final bill was produced with a credit in the amount of \$1745.33, leaving a correct balance of \$69.80. As a courtesy, Talk.com issued full credit on the account to bring the balance to \$0.00. Thia [sic] account has been closed.

(Cecilia Peterson's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 47).

**COUNT 77:** Talk.com billed Cecilia Peterson for services which had previously been cancelled by the consumer. The alleged violation, which occurred between August 16, 2000 and March 5, 2001, has resulted in at least two hundred and two (202) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

48. Betty Monroe, acting on behalf of Breeze Thru Market and Deli at 1103 Tennessee Avenue, Knoxville, Tennessee, filed a complaint with the CSD on March 28, 2001 (File No. 01-0719), alleging that Talk.com continued to bill her after she cancelled service with Talk.com. Ms. Moore states that she cancelled the service in June 2000, upon receiving her first bill. She states that Talk.com continued to bill her despite her attempts to resolve the problem. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on March 28, 2001.

In response to this complaint, Talk.com states

Upon reviewing the Breeze Thru Mkt and Deli's customer account records, Talk.com found that on December 7, 2000, Talk.com was notified that the customer had switched their service to the carrier of their choice using the service effective date (SED) of July 10, 2000. Talk.com then submitted an order to deactivate the account (21003064), however, the order did not complete. Upon receipt of a letter from the customer on March 31, 2001, Talk.com immediately deactivated the account per the SED. A final bill will be produced and will indicate the correct amount of credit due to the customer. If the balance indicates

a credit due to the customer, a refund check will be mailed directly to the customer. If the balance indicates an amount due to Talk.com, Talk.com will credit that balance in full.

(Betty Moore's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 48).

**COUNT 78** Talk.com continued to bill and attempted to collect from Betty Monroe for services which had previously been cancelled. The alleged violation, which occurred between July 10, 2000 and March 31, 2001, has resulted in at least two hundred and sixty-five (265) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

49. Lisa Greenhaw, acting on behalf of Woodlife Photography, Inc., 11 W. Huling Avenue, Memphis, Tennessee, filed a complaint with the CSD on April 5, 2001 (File No. 01-0802), alleging that Talk.com continued to bill the corporation after the service had been cancelled. Ms. Greenhaw states that Woodlife Photography, Inc. received the first bill in August 2000. Each time it received a bill from Talk.com, she would phone Talk.com customer service and be advised to disregard the billing. Talk.com continued billing Woodlife Photography, Inc. until she contacted the TRA in April 2001. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 5, 2001.

In response to the complaint, Talk.com states that Woodlife Photography, Inc.'s telephone service was switched to Talk.com when Elta Woodlife authorized the change on June 29, 2000. Talk.com further states that the service was disconnected on July 28, 2000; although the final bill was produced, the system did not automatically credit back to the deactivation date, resulting in a balance which increased each month with finance charges. Talk.com purportedly issued a credit in the amount of \$357.35 to the company, bringing the balance to \$0.00.

(Woodlife's Photography's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 49).

**COUNT 79:** Talk.com billed and attempted to collect from Woodlife Photography, Inc. for services which had been previously cancelled. The alleged violation, which occurred between July 31, 2000 and April 12, 2001, has resulted in at least two hundred and fifty-six (256) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

50. Pat Shell, 2712 Washington Lane, Thompson Station, Tennessee, filed a complaint on the CSD on April 9, 2001 (File No. 01-0837), alleging that Talk.com continued to bill her after she had cancelled its service. Ms. Shell states that she cancelled her service with Talk.com after receiving her first bill of \$68.81 in December 2000. Ms. Shell reports that she received a second bill from Talk.com in January 2001, in the amount of \$138.58. She asserts that Talk.com informed her the charge should be \$69.77 because customers are billed for an entire month even if they only have the service for one day; she explained that she had already paid for the one month of service. Talk.com, however, continued to bill her for \$138.58 each month until she filed a complaint with the CSD in April 2001. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 9, 2001.

In response to the complaint, Talk.com states that, Ms. Shell's telephone service was disconnected on December 21, 2000, but the billing did not credit back to the deactivation date. Talk.com purportedly credited Ms. Shells account for services not rendered and closed the account. (Pat Shell's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 50).

**COUNT 80:** Talk.com billed and attempted to collect from Pat Shell an amount for services which had previously been cancelled. The alleged violation, which occurred between

December 21, 2000 and April 13, 2001, has resulted in at least one hundred and fourteen (114) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

51. Buddy Hart, acting on behalf of Artworks Printing and Signs, 106 East Lane Street, Shelbyville, Tennessee, filed a complaint with the CSD on April 10, 2001 (File No. 01-0839), alleging that Talk.com breached its promise to provide his company with local and long distance service at a rate of \$54.95 per month, with two-hundred (200) free minutes of long distance. Mr. Hart states that he sent Talk.com a cancellation letter and check for \$65.00 on December 20, 2000 and reinstated his service with BellSouth. Mr. Hart states that when a representative of Talk.com called him about his account in February 2001, he explained that he had sent a cancellation letter. Mr. Hart alleges that he was told that the problem would be resolved. Mr. Hart states he received another phone call from a Talk.com representative who threatened to turn his account over to a collection agency if it was not paid in full. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 10, 2001.

In response to the complaint, Talk.com states that “[w]hen Mr. Hart’s account was established, he was in error, placed on an incorrect calling plan.” Talk.com issued a refund check of \$27.33, purportedly representing the amount that Mr. Hart was overcharged for the service. (Buddy Hart’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 51).

**COUNT 81:** Talk.com billed and collected an amount from Buddy Hart in excess of that specified in the agreement governing the charges for such services. The alleged violation, which occurred between December 20, 2000 and April 13, 2001, has resulted in at least one hundred and fifteen (115) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

52. Beth Davis of 9229 Birchwood Pike, Harrison, Tennessee, filed a complaint with the CSD on April 10, 2001 (File No. 01-0848), alleging that Talk.com continued to bill her after she cancelled its service. Ms. Davis states that she agreed to change her service to Talk.com in July 2000 after being strong-armed by a solicitor who "was not taking no for an answer," but called Talk.com back within twenty-four (24) hours to request that it cancel the order. She asserts that she was told by the Talk.com representative that there was no service in her name in its system. Ms. Davis states that in September 2000 she received a "final bill" from BellSouth and called immediately to reinstate her service with BellSouth. Ms. Davis reports that six (6) months later she received a bill from Talk.com for over \$200. She immediately called Talk.com and was assured by a customer service representative that the problem would be resolved and the account would be cancelled. According to Ms. Davis, however, Talk.com billed her again, in an amount in excess of the first bill she had received. Ms. Davis then filed a complaint with the CSD. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 10, 2001.

In response to the complaint, Talk.com states that Beth Davis authorized the conversion of local and long distance service to Talk.com on June 6, 2000. Talk.com further states that their records did not show that a cancellation order was requested or submitted, which caused the service to bill until March 2001, when Ms. Davis called to cancel her service. On April 5, 2001, the total amount billed, \$218.56, was purportedly credited to Ms. Davis' account. (Beth Davis' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 52).

**COUNT 82:** Talk.com continued to bill and attempted to collect amounts from Beth Davis for services which had previously been cancelled. The alleged violation, which occurred between June 6, 2000 and April 24, 2001, has resulted in at least three hundred and twenty-three



(323) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

53. Tina Cook, 3048 Steekee School Road, Loudon, Tennessee, filed a complaint with the CSD on April 19, 2001 (File No. 01-0909), alleging that Talk.com continued to bill her after she cancelled its service. Ms. Cook reports that, after receiving her first bill of \$68.79 in November 2000, she decided to completely cancel Talk.com service on one of her lines and retain only the Talk.com long distance service on another line. Her complaint states that she called Talk.com in November of 2000, cancelled her service and followed up with a letter stating her intent to cancel the Talk.com service in its entirety on one of her lines and the local service only on the other. In December 2000, Ms. Cook received a second bill for \$137.92. Ms. Cook states that she contacted Talk.com again and was informed that she would receive a credit for \$130.00. Ms. Cook reports that she received an invoice showing the \$130.00 credit and a note apologizing for her dissatisfaction. Ms. Cook reports that four months later, in April 2001, she received another bill stating that her account was overdue and that she owed \$130.00 for two months service. Ms. Cook reports that the Talk.com representative she called indicated that if Ms. Cook did not pay the bill, her account would be turned over to a collection agency. Ms. Cook requested to speak with a supervisor who confirmed this statement. Ms. Cook then filed a complaint with the CSD. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 19, 2001.

In response to the complaint, Talk.com admits that Ms. Cook contacted the customer service department in December 2000 to cancel all service on one of her lines and the local service on the other. Talk.com states that because it did not receive notification of disconnection from the carriers Ms. Cook chose to replace it, Ms. Cook continued to be billed. Talk.com

issued a credit in the amount of \$218.03 and closed the account. (Tina Cook's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 53).

**COUNT 83:** Talk.com continued to bill and attempted to collect from Tina Cook amounts for services which had previously been cancelled. The alleged violation, which occurred between November 2, 2000 and May 3, 2001, has resulted in at least one hundred and eighty-three (183) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

54. John Montgomery d/b/a John Montgomery Insurance Agency of 810 State Street, Knoxville, Tennessee, filed a complaint with the CSD on April 19, 2001 (File No. 01-0918), alleging that Access One continued to bill his business after he had cancelled its service.<sup>42</sup> In January 2001, Mr. Montgomery received a bill from Access One for \$32.54. He states that he contacted Access One and was assured that his bill would be "zeroed" out. However, Access One continued to bill the business through April 2000 in increasing amounts. The April 5, 2001 bill was for \$516.89. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 19, 2001.

In response to the complaint, Talk.com states:

On November [sic] 2000, Talk.com updated numerous resale accounts to our Unbundled Network Element (UNE) platform including John Montgomery Insurance Agency. As Talk.com was unaware that the John Montgomery Insurance Agency was switched to BellSouth as his new carrier on October 30<sup>th</sup>, John Montgomery's business was switched back to Talk.com again when the account was updated on November 16, 2000. When the John Montgomery Insurance Agency telephone services were switched back to Talk.com again, a secondary account was created in error, resulting in two (2) accounts for the John Montgomery Insurance Agency.

With the assistance of CSD, Talk.com purportedly deactivated the two accounts and

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<sup>42</sup> Mr. Montgomery also alleges that Talk.com converted his telephone service without authorization. His allegations of slamming begin on page 34 of this document.

issued a credit to the John Montgomery Insurance Agency for the entire account balance. (The John Montgomery Insurance Agency's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 54).

**COUNT 84:** Talk.com continued to bill and attempted to collect from John Montgomery Insurance Agency amounts for services which had previously been cancelled. The alleged violation, which occurred between January 10, 2001 and April 26, 2001, has resulted in at least one hundred and seven (107) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

55. Veronica Castillo, 1575 Galloway, Apt. # 4, Memphis, Tennessee, filed a complaint with the CSD on March 23, 2001 (File No. 01-0982), alleging that Talk.com continued to deduct funds from her checking account after she cancelled her service in October of 2000. Ms. Castillo states that Talk.com deducted \$68.65 from her checking account on February 14, 2001, and despite numerous telephone calls to Talk.com, she has been unsuccessful in resolving the dispute. Ms. Castillo asserts that she is a single mother and the deduction caused her a financial hardship in February 2001. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on April 30, 2001.

In response to the complaint, Talk.com states Ms. Castillo "moved and was issued a new telephone number due to the area code change. However, the disconnection order for her prior telephone number did not complete and when the new residence [sic] moved in they used the telephone." Talk.com purportedly adjusted the bill in the amount of \$480.70, representing the amount in dispute.

Ms. Castillo responds that her move did not entail an area code change because she relocated down the street from her former residence, which she shared with her parents. She

states that the disconnected phone was in a bedroom in her parents' home and it has not been replaced. She denies that new residents occupy the room and states that her parents are elderly, one with Alzheimer's, and they can barely use the phone they have in the living room of their home. (Veronica Castillo's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 55).

**COUNT 85:** Talk.com billed and collected for services which had previously been cancelled by Veronica Castillo. The alleged violation, which occurred between October 1, 2000 and May 17, 2001, has resulted in at least two hundred and twenty-nine (229) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

56. Malisha Blackman of 528 Norton Avenue in Nashville, Tennessee, filed a complaint with the CSD on May 11, 2001 (File No. 01-1059), alleging that Talk.com continued to bill her for services that she cancelled. Ms. Blackman states that she agreed to switch to Talk.com in July 2000, but the change in service never occurred. After she called Talk.com to cancel the order, she received a bill from Talk.com in the amount of \$79.80. She apparently received her first bill in March 2001. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on May 11, 2001.

In a May 24, 2001 response to the complaint, Talk.com states that Ms. Blackman's order was rejected due to an incompatible feature, Voice Mail. Talk.com states that although telephone service was not converted to Talk.com, billing records were created, causing her to be billed in error. On April 9, 2001, Talk.com purportedly issued a credit in the amount of \$79.80. Nevertheless, a balance of \$79.80 remained on Ms. Blackman's bill. Talk.com purportedly issued a second credit in the amount of \$79.80 on May 24, 2001. (Malisha Blackman's

complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 56).

**COUNT 86:** Talk.com continued to bill and attempted to collect for services which had previously been cancelled by Malisha Blackman. The alleged violation, which occurred between March 20, 2001 and May 24, 2001, has resulted in at least sixty-six (66) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

57. Jack W. Whitman of 245 Fairway Drive, Donelson, Tennessee, filed a complaint with the CSD on May 16, 2001 (File No. 01-1092), alleging that AOL Long Distance debited his checking account for calls although he had not chosen it as his provider. Records show that Talk.com debited his account on two separate occasions. The first occasion was on March 27, 2001, in the amount of \$245.33 and the second was on April 27, 2001, for \$209.32. Mr. Whitman attempted for approximately sixteen (16) weeks to resolve the dispute with Talk.com before filing his complaint with the CSD. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on May 16, 2001.

In a May 30, 2001 response to the complaint, Talk.com states:

Mr. Whitman contacted our Customer Care Center on April 3 [sic] 2001 regarding adult entertainment billing on his long distance account and was assisted by a floor supervisor who discussed this issue with Mr. Whitman. Based on the calling history of Mr. Whitman's account, which reflected minimal long distance usage over the course of his account history, a refund in the amount of \$33.97 was issued to Mr. Whitman's checking account on April 3 [sic] 2001. Our records indicate that delayed billing created an additional invoice of \$209.23 on April 15 [sic] 2001 and was paid by Mr. Whitman's checking account on April 26, 2001. We have issued a refund to Mr. Whitman's checking account for this amount on May 29, 2001 and removed his billing information from the account.

(Jack Whitman's complaint, the CSD's notification and Talk.com's response are attached hereto as collective exhibit 57).

**COUNT 87:** Talk.com billed and collected amounts from Jack W. Whitman's checking account for services to which the consumer had not subscribed. The alleged violation, which occurred between March 27, 2001 and May 29, 2001, has resulted in at least sixty-four (64) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

58. John Whalen of 1496 Oakdale Highway, Harriman, Tennessee, filed a complaint with the CSD on May 24, 2001 (File No. 01-1146), alleging that he discovered that Talk.com had double billed him directly and through his credit card in October of 2000. He states that numerous telephone calls to Talk.com failed to resolve the problem. Mr. Whalen asserts that a Talk.com representative admitted that Talk.com had double billed him since the previous spring, but stated that it was only required to reimburse him for two (2) months of overbilling. Mr. Whalen states that he contacted Talk.com in December of 2000 to cancel its service because the double billing continued. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on May 24, 2001.

In a June 6, 2001 response to the complaint, Talk.com states:

Due to an area code change, inadvertently a separate billing account was created for Mr. Whalen's long distance service, which in turn caused Mr. Whalen to be billed in error. We apologize for any inconvenience this may have caused. In lieu of this, prior to receipt of this complaint, credits in the amount of \$67.60 were issued to the accounts, representing all fees charged after December 2000.

(John Whalen's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 58).

**COUNT 88:** Talk.com billed and collected amounts for services which had previously been cancelled by John Whalen. The alleged violation, which occurred between October 1, 2000 and June 6, 2001, has resulted in at least two hundred and forty-nine (249) days of improper

billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

59. Rudolph Blue of 105 Brunswick Drive, Hendersonville, Tennessee, filed a complaint with the CSD on June 6, 2001 (File No. 01-1219), alleging that Talk.com continued to bill him after he cancelled its service in August of 2000. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on June 6, 2001.

In a June 20, 2001 response to the complaint, Talk.com states:

Mr. Blue's service was confirmed with Talk.Com in July 2000 and returned to Bell South in September 2000. Due to a timing difference, the order to deactivate Mr. Blue's billing was not completely processed at the time the account was canceled, causing Mr. Blue to be billed in error. We apologize for any inconvenience this may have caused. We have issued a credit to the account in the amount of \$364.08, representing the charges billed after September 2000. Mr. Blue has agreed to remit payment for the balance due of \$91.92. The account is no longer billing and will be closed upon receipt of payment. Mr. Blue stated he is satisfied with this resolution and has no further issues with Talk.com.

(Rudolph Blue's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 59).

**COUNT 89:** Talk.com continued to bill and attempted to collect for services which had previously been cancelled by Rudolph Blue. The alleged violation, which occurred between September 1, 2000 and June 20, 2001, has resulted in at least three hundred and twenty-four (324) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

60. Mr. William James of 1443 Vance Avenue, Memphis, Tennessee, filed a complaint with the CSD on June 6, 2001 (File No. 01-1220), alleging that after he agreed to switch his long distance service to Talk.com, Talk.com began billing him for both local and long distance service, without providing him with service. Mr. James states that he received bills for local and

long distance service from Talk.com approximately four (4) months after agreeing to change his long distance service, but BellSouth and AT&T assured him they were still providing service. Mr. James states that a Talk.com representative told him his account had never been activated and was being closed. Mr. James states that he received another bill from Talk.com for local and long distance service on April 9, 2001. Mr. James asserts that Talk.com representatives again assured him that there was no usage on the account. Mr. James states that shortly thereafter he retired from his law office and disconnected his telephone. Mr. James asserts that in early May 2001, he received a call from his former law office advising him that he had received another telephone bill from Talk.com. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on June 6, 2001.

In response to the complaint, Talk.com states that it "receive[d] a cancellation notice for Mr. James' original sale order. Respectively, [sic] the order was cancelled, however, the billing account was not cancelled." Talk.com purportedly deactivated the billing account and issued a credit in the amount of \$201.05, representing the balance on the account. (William James' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 60).

**COUNT 90:** Talk.com billed William James for local services without authorization and without providing the service. The alleged violation, which occurred between October 30, 2000 and June 19, 2001, has resulted in at least two hundred and thirty-three (233) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

61. Ms. Patricia Gatley of 1909 Hwy. 48 South, Centerville, Tennessee, filed a complaint with the CSD on June 15, 2001 (File No. 01-1294), alleging that Talk.com breached its promise



to provide her with a calling plan with a monthly fee of approximately thirty-three dollars (\$33.00). Ms. Gatley alleges that the first bill was \$168.00 and it included a sixteen dollar (\$16.00) additional fee for an area wide calling plan, twenty-three cents (\$0.23) for each local toll call and a per minute rate on each of the local toll calls. Ms. Gatley reports that after she cancelled the service, Talk.com debited her checking account for three (3) additional months, causing her to be overdrawn on more than one occasion. She asserts that repeated calls and e-mails to Talk.com were unsuccessful in resolving the erroneous billing and collections by Talk.com. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on June 15, 2001.

In response to the complaint, Talk.com states:

Patricia Gatley [sic] contacted our Customer Care Department on December 28, 2000 to request cancellation. Ms Gatley's [sic] service was converted on that day. Due to a billing error, Ms. Gatley's [sic] account generated an invoice in April 2001. We had previously issued a refund in the amount of \$33.56, representing the total amount billed in error. Upon speaking with Ms. Gatley [sic], and reviewing her account it was determined that a previous refund to Ms. Gatley's [sic] method of payment on file was never received. The refund represented intralata (local toll) calls billed in error after Ms. Gatley [sic] requested a calling plan to include intralata calls. In lieu of this, we have issued a reimbursement check in the amount of \$253.95, representing the previous refund of \$126.84 and an additional refund of \$127.11, representing the remaining intralata calls Ms. Gatley [sic] was billed in error.

(Patricia Gatley's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 61).

**COUNT 91:** Talk.com billed and collected an amount from Patricia Gatley in excess of that specified in the agreement governing the charges for such services. The alleged violation, which occurred between December 28, 2000 and June 29, 2001, has resulted in at least one

hundred and eighty-four (184) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

62. Mr. Dennis McCarthy of 304 S. Gay Street in Knoxville, Tennessee, filed a complaint on June 19, 2001 (File No. 01-1320), alleging that Talk.com had charged him long distance rates on local calls. Mr. McCarthy stated that although he changed his service to The Other Phone Company in the fall of 2000, he did not receive a bill until April 28, 2001. The bill, which was for \$61.30, with a past due balance of \$443.61, included charges for telephone calls from his law office to his university office, which are only seven (7) blocks apart. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on June 19, 2001.

In response to the complaint, Talk.com states that, "due to an error in provisioning, Mr. McCarthy's telephone numbers . . . were not placed on the correct local toll calling plan, causing him to be billed at a per minute rate." Talk.com purportedly issued credit in the amount of \$527.72 representing the total amount billed in error for local toll calls. (Dennis McCarthy's complaint and Talk.com's response are attached hereto as collective Exhibit 62).

**COUNT 92:** Talk.com billed and attempted to collect from Dennis McCarthy an amount in excess of that specified in the agreement governing the charges for such services. The alleged violation, which occurred between March 23, 2001 and July 6, 2001, has resulted in at least one hundred and six (106) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 1220-4-2-.58.

63. Ms. Helen Spurlock of 1013 Pin Oak Drive in Pleasant View, Tennessee, filed a complaint with the CSD on July 19, 2001 (File No. 01-1539), alleging that Talk.com billed her for services to which she had not subscribed. Ms. Spurlock states she received the first bill

December 14, 2000, in the amount of \$321.98. Ms. Spurlock alleges she contacted Talk.com and spoke with a representative who stated that a note would be placed on the account to bring it to a zero balance. On December 26, 2000, Ms. Spurlock states she received a second statement for \$389.88. She states she sent written notice to Talk.com requesting that this billing be cancelled. One notice dated January 11, 2001 indicated that the account would be sent to collections if not paid immediately. Ms. Spurlock contacted BellSouth and was assured that it had provided her service continuously. On January 19, 2001, Ms. Spurlock waited on hold for over one hour, Ms. Spurlock before she was connected to a Talk.com representative who advised her that the bills and collection letter were mistakes should be disregarded. Ms. Spurlock received another bill dated February 8, 2001 with a due date of April 2, 2001. Ms. Spurlock states that a Talk.com representative again instructed her to disregard the statement. Ms. Spurlock received subsequent bills on March 8, 2001 and May 2, 2001 and was told by a Talk.com representative to disregard them. She filed a complaint with the Department of Commerce and Insurance, Division of Consumer Affairs, who forwarded the complaint to the CSD on July 19, 2001. The CSD provided Talk.com with a Notice of Alleged Violation and a copy of the complaint on July, 19, 2001.

In response to the complaint, Talk.com states:

Helen Spurlock authorized Talk.com Local and Long Distance services through third party verification. Our records indicate that the provisioning side of the new service order rejected and never completed however, the billing order did complete in error. This caused Ms. Spurlock to be invoiced for feature charges. We have issued total credits in the amount of \$732.22 representing the total amounts billed. Ms. Spurlock's account with Talk.com has been closed.

(Helen Spurlock's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 63).

**COUNT 93:** Talk.com continued to bill and attempted to collect from Helen Spurlock for services not provided. The alleged violation, which occurred between December 14, 2000 and July 13, 2001, has resulted in at least two hundred and eleven (211) days of improper billing and/or collection in violation of Tenn. Code Ann. § 65-4-125(b) and Tenn. Comp. R. & Reg. 220-4-2-.58.

## **COMPLAINTS ALLEGING VIOLATIONS OF THE "DO NOT CALL" REGISTER**

The following consumer complaints allegedly arose when telephone solicitors acting on Talk.com's behalf knowingly called Tennessee residential subscribers who object to receiving telephone solicitations and had properly registered their telephone numbers in the "Do Not Call" register in effect at the time the solicitation was made in violation of Tenn. Code Ann. § 65-4-401 *et seq.* After receiving the first two complaints in August 2000, the CSD sent Talk.com Notices of Alleged Violation to Talk.com via fax and certified mail on August 23, 2000 and on August 30, 2000. Notwithstanding Talk.com's receipt of these two (2) Notices of Violation, the CSD has received fifty-one (51) additional complaints alleging violations of Tenn. Code Ann. § 65-4-401, *et seq.* Talk.com submitted an incomplete application for the Do Not Call program to the Authority on September 19, 2000 and tendered a completed application on October 5, 2000. The CSD electronically transferred to Talk.com the Do Not Call register on October 6, 2000.

64. Teresa A. Tharpe of 206 Pebble Place, Smyrna, Tennessee, filed a complaint with the CSD on August 21, 2000 (T00-00065), alleging that Talk.com made or caused to be made a telephone solicitation to her telephone number on August 2, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail on August 23, 2000.

In its response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures.

(Teresa Tharpe's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 64).

**COUNT 94:** Talk.com knowingly made or caused to be made a telephone solicitation on August 2, 2000 to Teresa A. Tharpe, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

65. Frederick J. Snow of 1807 Westchester Drive, Knoxville, Tennessee, filed a complaint with the CSD on August 24, 2000 (File No. T00-00098), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on August 1, 2000, notwithstanding the fact that the phone number was properly included on the "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail on August 30, 2000.

In its response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures.

Mr. Snow's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 65)

**COUNT 95:** Talk.com knowingly made or caused to be made a telephone solicitation on September 9, 2000 to Frederick J. Snow, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection

and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

66. Daniel K. Brown of 1652 Union Road, Dickson, Tennessee filed a complaint with the CSD on September 12, 2000 (File No. T00-00189), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 9, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail on September 14, 2000.

In its response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Daniel Brown's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 66).

**COUNT 96:** Talk.com knowingly made or caused to be made a telephone solicitation on September 9, 2000 to Daniel K. Brown, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

67. Laura Johnson of 5421 Tiffany Road, Knoxville, Tennessee, filed a complaint with the CSD on September 12, 2000 (File No. T00-00190), alleging that Talk.com had made or caused to be made two telephone solicitations to her telephone number on September 7, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. Ms. Johnson states in her complaint, "I received two phone calls from this company today. I told the first caller that they should not call me back. Two hours or so later, the second call came in, and so I decided to complain." The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In its response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Laura Johnson's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 67).

**COUNT 97:** Talk.com knowingly made or caused to be made a telephone solicitation on September 7, 2000 to Laura Johnson, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 98:** Talk.com knowingly made or caused to be made a second telephone solicitation on September 7, 2000 to a residential subscriber in this state who objects to receiving



telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

68. Allen R. Corbitt of 1244 N. Graycroft Avenue, Madison, Tennessee, filed a complaint with the CSD on September 12, 2000 (File No. T00-00191), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 2, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. (File No. T0000191). The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In its response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Allen Corbitt's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 68).

**COUNT 99:** Talk.com knowingly made or caused to be made a telephone solicitation on September 2, 2000 to Allen R. Corbitt, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

69. Kristie Guthrie of 535 Moncrief Avenue, Goodlettsville, Tennessee, filed a complaint with the CSD on September 12, 2000 (File No. T00-00192), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 1, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In its response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Kristie Guthrie's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 69).

**COUNT 100:** Talk.com knowingly made or caused to be made a telephone solicitation on September 1, 2000 to Kristie Guthrie, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

70. Thomas E. and Marion Fitzgerald of 1123 Havenwood Drive, Maryville, Tennessee, filed a complaint with the CSD on September 12, 2000 (File No. T00-00193), alleging that Talk.com had made or caused to be made two telephone solicitations to their

telephone number on August 31, 2000, notwithstanding the fact that their phone number was properly included on the Tennessee "Do Not Call" register. The Fitzgeralds state in their complaint, "These people called us twice on the same day!" The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In its response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(The Fitzgeralds' complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 70).

**COUNT 101:** Talk.com knowingly made or caused to be made a telephone solicitation on August 31, 2000 to Thomas E. and Marion Fitzgerald, residential subscribers in this state, who object to receiving telephone solicitations and have given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 102:** Talk.com knowingly made or caused to be made a second telephone solicitation on August 31, 2000 to Thomas E. and Marion Fitzgerald, residential subscribers in this state who object to receiving telephone solicitations and have given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

71. Brenda L. Rayman of 5504 Timbercrest Trail, Knoxville, Tennessee, filed a complaint with the CSD on September 12, 2000 (File No. T00-00194), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 7, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Brenda Rayman's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 71)

**COUNT 103:** Talk.com knowingly made or caused to be made a telephone solicitation on September 7, 2000 to Brenda L. Rayman, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

72. Christopher A. Haney of 155 Scenic Harpeth Drive, Kingston Springs, Tennessee, filed a complaint with the CSD on September 12, 2000 (File No. T00-00195), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 7, 2000, notwithstanding the fact that the phone number was properly included on the

Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Christopher Haney's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 72).

**COUNT 104:** Talk.com knowingly made or caused to be made a telephone solicitation on September 7, 2000 to Christopher A. Haney, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

73. Jack A. Williams of 2621 Reagan Road, Knoxville, Tennessee, filed a complaint with the CSD on September 12, 2000 (File No. T00-00201), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on August 31, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Jack Williams's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 73).

**COUNT 105:** Talk.com knowingly made or caused to be made a telephone solicitation on August 31, 2000 to Jack A. Williams, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

74. David R. Smith of 1819 Pine Needles Trail, Chattanooga, Tennessee, filed a complaint with the CSD on September 12, 2000 (File No. T00-00203), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 9, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and

submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(David Smith's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 74).

**COUNT 106:** Talk.com knowingly made or caused to be made a telephone solicitation on September 9, 2000 to David R. Smith, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

75. Matthew E. Smith of 244 Shrewsburg Drive, Murfreesboro, Tennessee, filed a complaint with the CSD on September 13, 2000 (File No. T00-00207), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 11, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 14, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Matthew Smith's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 75).

**COUNT 107:** Talk.com knowingly made or caused to be made a telephone solicitation a September 11, 2000 to Matthew E. Smith, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

76. Michael R. Chance of 509 North Woods Court, Brentwood, Tennessee, filed a complaint with the CSD on September 14, 2000 (File No.T00-00215), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 12, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 19, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Michael Chance's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 76).

**COUNT 108:** Talk.com knowingly made or caused to be made a telephone solicitation on September 12, 2000 to Michael R. Chance, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection



and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

77. Bruce W. Jones of 208 Winmont Tury, Knoxville, Tennessee, filed a complaint with the CSD on September 13, 2000 (File No. T00-00216), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 9, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 19, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Bruce Jones's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 77).

**COUNT 109:** Talk.com knowingly made or caused to be made a telephone solicitation on September 9, 2000 to Bruce W. Jones, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

78. Carl N. Owen of 9016 Forest Lawn Drive, Brentwood, Tennessee, filed a complaint with the CSD on September 18, 2000 (File No. T00-00218), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 7, 2000, and September 9, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 19, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Carl Owen's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 78).

**COUNT 110:** Talk.com knowingly made or caused to be made a telephone solicitation on September 7, 2000 to Carl N. Owen, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 111:** Talk.com knowingly made or caused to be made a second telephone solicitation on September 9, 2000 to a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose

number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

79. Thomas H. Davis of 526 D'Ann Drive, Smyrna, Tennessee, filed a complaint with the CSD on September 18, 2000 (File No. T00-00219), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on August 18, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 19, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Thomas Davis's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 79).

**COUNT 112:** Talk.com knowingly made or caused to be made a telephone solicitation on August 18, 2000 to Thomas H. Davis, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

80. John C. Baumgartner of 2922 Edonia Drive, Knoxville, Tennessee, filed a complaint with the CSD on September 18, 2000 (File No. T00-00220), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 5, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 19, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(John Baumgartner's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 80).

**COUNT 113:** Talk.com knowingly made or caused to be made a telephone solicitation on September 5, 2000 to John C. Baumgartner, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

81. Richard E. Hinze of 130 Oostagala Drive, Loudon, Tennessee, filed a complaint with the CSD on September 18, 2000 (File No. T00-00221), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on August 31, 2000 at 9:23 p.m., notwithstanding the fact that the phone number was properly included on the Tennessee

“Do Not Call” register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 19, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National “No Sales Solicitation Calls List” and the various state “Do Not Call Lists” and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer’s telephone number to our internal Do Not Call List.

(Richard Hinze’s complaint, the CSD’s notification and Talk.com’s response are attached hereto as collective Exhibit 81).

**COUNT 114:** Talk.com knowingly made or caused to be made a telephone solicitation August 31, 2000 to Richard E. Hinze, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the “Do Not Call” Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 115:** Without the permission of Richard E. Hinze, a residential subscriber, Talk.com made or caused to be made a telephone solicitation to such subscriber after the hour of nine o’clock p.m. (9:00 p.m.) in violation of Tenn. Code Ann. § 65-4-402.

82. Ellen Beene of 2815 Black Stallion Court, Murfreesboro, Tennessee, filed a complaint with the CSD on September 13, 2000 (File No. T00-00228), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 6, 2000 and September 7, 2000, notwithstanding the fact that the phone number was properly

included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 20, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Ellen Beene's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 82).

**COUNT 116:** Talk.com knowingly made or caused to be made a telephone solicitation on September 6, 2000 to Ellen Beene, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 117:** Talk.com knowingly made or caused to be made a second telephone solicitation on September 7, 2000 to Ellen Beene, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 118:** Talk.com knowingly made or caused to be made a telephone solicitation on September 11, 2000 to a residential subscriber in this state who objects to receiving telephone

solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

83. Juanita H. Evans of 2000 Eastwood Drive, Maryville, Tennessee, filed a complaint with the CSD on September 20, 2000 (File No. T00-00238), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on or about September 5, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. Ms. Evans further states in her complaint, "When I told the lady calling that I was on the "Do Not Call" list, she said the law did not apply to them." The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 20, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Juanita Evans's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 83).

**COUNT 119:** Talk.com knowingly made or caused to be made a telephone solicitation on or about September 5, 2000 to Juanita H. Evans, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days

prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

84. M. Jane Turnage of 664 North Idlewild, Memphis, Tennessee, filed a complaint with the CSD on September 20, 2000 (File No. T00-00248), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 8, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 22, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Jane Turnage's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 84).

**COUNT 120:** Talk.com knowingly made or caused to be made a telephone solicitation on September 8, 2000 to M. Jane Turnage, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.



85. Linda Robinett of 1875 South Rainbow Drive, Memphis, Tennessee, filed a complaint with the CSD on September 21, 2000 (File No. T00-00251), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 7, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. Ms. Robinett states in her complaint, "As soon as I realized the type of call, I asked for information and they would only give the name of the company and the state. I insisted but they refused." The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 22, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Linda Robinett's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 85).

**COUNT 121:** Talk.com knowingly made or caused to be made a telephone solicitation on September 7, 2000 to Linda Robinett, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

86. Robert K. Ross of 257 Bland Drive, N.E., Cleveland, Tennessee, filed a complaint with the CSD on September 21, 2000 (File No. T00-00252), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 13, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 22, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Robert Ross's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 86).

**COUNT 122:** Talk.com knowingly made or caused to be made a telephone solicitation on September 13, 2000 to Robert K. Ross, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

87. Judy Womac of 2205 County Road 50, Riceville, Tennessee, filed a complaint with the CSD on September 21, 2000 (File No. T00-00253), alleging that Talk.com had made or caused to be made three (3) telephone solicitations to her telephone number, one call (1) on

September 6, 2000 and two (2) calls on September 11, 2000 at 2 p.m. and 5 p.m., notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 22, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Judy Womac's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 87).

**COUNT 123:** Talk.com knowingly made or caused to be made a telephone solicitation on September 6, 2000 to Judy Womac, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 124:** Talk.com knowingly made or caused to be made a second telephone solicitation on September 11, 2000 at 2 p.m. to Judy Womac, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 125:** Talk.com knowingly made or caused to be made an additional telephone solicitation on September 11, 2000 at 5 p.m. to Judy Womac, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

88. Bernet V. Poczobut of 1219 Everett Road, Knoxville, Tennessee, filed a complaint with the CSD on September 21, 2000 (File No. T00-00254), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 11, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. Mr. Poczobut further states in his complaint, "I asked for company and name of caller. I asked for phone number and last name and was refused. I explained I was on no call list and was told that was in Tennessee only and from Florida they can call." The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 22, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Bernet Poczobut's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 88).

**COUNT 126:** Talk.com knowingly made or caused to be made a telephone solicitation on September 11, 2000 to Bernet V. Poczobut, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

89. Forrest L. Orr of 2025 W. Velmetta Circle, Knoxville, Tennessee, filed a complaint with the CSD on September 21, 2000 (File No. T00-00255), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 7, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. Mr. Orr further states in his complaint, "When asked, caller said he represented Talk.com. I repeatedly asked him for his phone number. He refused to give it. I told him he was violating Tennessee No Call regulation, he responded, 'I'm not in Tennessee.'" The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 22, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Forrest Orr's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 89).

**COUNT 127:** Talk.com knowingly made or caused to be made a telephone solicitation on September 7, 2000 to Forrest L. Orr, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

90. Linda S. Corder of 515 Marlow Drive, Hixson, Tennessee, filed a complaint with the CSD on September 21, 2000 (File No. T00-00256), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 12, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. Ms. Corder further states in her complaint, "When he paused to let me agree to start [my] savings today I asked where his company was located. When I told him I had 'Do Not Call' service he became very nasty and said, 'Lady you can't do a thing to me. I'm not in Tennessee.'" The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 22, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Linda Corder's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 90).

**COUNT 128:** Talk.com knowingly made or caused to be made a telephone solicitation on September 12, 2000 to Linda S. Corder, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

91. Sherry Richards of 605 Osborne Lane, Murfreesboro, Tennessee, filed a complaint with the CSD on September 22, 2000 (File No. T00-00263), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 13, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 26, 2000. The CSD has no record of receiving a response pertaining to the Notice of Alleged Violation accepted by Talk.com on or about October 6, 2000.

(Sherry Richards's complaint and the CSD's notification are attached hereto as collective Exhibit 91).

**COUNT 129:** Talk.com knowingly made or caused to be made a telephone solicitation on September 13, 2000 to Sherry Richards, a residential subscriber who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 404 and Tenn. Comp. R. & Reg. 1220-4-11.

92. Leah M. Owens of 107 Caverton Lane, #23 E, Knoxville, Tennessee, filed a complaint with the CSD on September 22, 2000 (File No. T00-00264), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 7,

2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 26, 2000. The CSD has no record of receiving a response pertaining to the Notice of Alleged Violation accepted by Talk.com on or about October 6, 2000.

(Leah Owens's complaint and the CSD's notification are attached hereto as collective Exhibit 92).

**COUNT 130:** Talk.com knowingly made or caused to be made a telephone solicitation on September 7, 2000 to Leah M. Owens, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

93. Remonia G. Headrick of 710 Brown School Road, Maryville, Tennessee, filed a complaint with the CSD on September 22, 2000 (File No. T00-00266), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 13, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 26, 2000. The CSD has no record of receiving a response pertaining to the Notice of Alleged Violation accepted by Talk.com on or about October 6, 2000.

(Remonia Headrick's complaint and the CSD's notification are attached hereto as collective Exhibit 93).

**COUNT 131:** Talk.com knowingly made or caused to be made a telephone solicitation on September 13, 2000 to Remonia G. Headrick, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such



objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

94. Alton E. McConnell, Jr. of 300 Nawakwa Trail, Madison, Tennessee, filed a complaint with the CSD on September 21, 2000 (File No. T00-00268), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 11, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 26, 2000. The CSD has no record of receiving a response pertaining to the Notice of Alleged Violation accepted by Talk.com on or about October 6, 2000.

(Alton McConnell, Jr.'s complaint and the CSD's notification are attached hereto as collective Exhibit 94).

**COUNT 132:** Talk.com knowingly made or caused to be made a telephone solicitation September 11, 2000 to Alton E. McConnell, Jr., a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

95. Pamela R. Miller of 101 Garland Court, White House, Tennessee, filed a complaint with the CSD on September 25, 2000 (File No. T00-00275), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 18, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 29, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Pamela Miller's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 95).

**COUNT 133:** Talk.com knowingly made or caused to be made a telephone solicitation on September 18, 2000 to Pamela R. Miller, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

96. Linda S. Bolt of 108 W. Red Bud Drive, Knoxville, Tennessee, filed a complaint with the CSD on September 26, 2000 (File No. T00-00276), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on or about September 5, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 29, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance

with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Linda Bolt's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 96).

**COUNT 134:** Talk.com knowingly made or caused to be made a telephone solicitation on or about September 5, 2000 to Linda S. Bolt, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

97. Carl G. Benjamin of 1611 Arrowwood Road, Knoxville, Tennessee, filed a complaint with the CSD on September 26, 2000 (File No. T00-00278), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 14, 2000 and September 22, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. Mr. Benjamin further states, "September 14, 2000 male caller I told him we were on Tennessee DO NOT CALL list and I was going to complain to TRA, he said it wouldn't do any good." The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 29, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register.

We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Carl Benjamin's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 97).

**COUNT 135:** Talk.com knowingly made or caused to be made a telephone solicitation on September 14, 2000 to Carl G. Benjamin, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 136:** Talk.com knowingly made or caused to be made a second telephone solicitation on September 22, 2000 to a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

98. Mrs. Charles (Alyce) Long of 336 Morton Road, Collierville, Tennessee, filed a complaint with the CSD on September 26, 2000 (File No. T00-00281), alleging that Talk.com had made or caused to be made three (3) telephone solicitations to her telephone number on September 12, 2000, September 13, 2000 and September 14, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. Mrs. Long further states in her complaint, "When I told the operator that my number was listed with the Tennessee Regulatory Authority, she said it didn't apply to them because they were outside the district. She continued to give her sales pitch so I hung up the phone." The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail September 29, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Alyce Long's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 98).

**COUNT 137:** Talk.com knowingly made or caused to be made a telephone solicitation September 12, 2000 to Alyce Long, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 138:** Talk.com knowingly made or caused to be made a second telephone solicitation on September 13, 2000 to Alyce Long, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 139:** Talk.com knowingly made or caused to be made an additional telephone solicitation on September 14, 2000 to Alyce Long, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days

prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

99. Robert D. McAllister of 3267 Park Hill Road, Murfreesboro, Tennessee, filed a complaint with the CSD on September 28, 2000 (File No. T00-00286), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 18, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail October 3, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Robert McAllister's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 99).

**COUNT 140:** Talk.com knowingly made or caused to be made a telephone solicitation on September 18, 2000 to Robert D. McAllister, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

100. Joseph E. Burriesci of 1505 Dunbarton Drive, Maryville, Tennessee, filed a complaint with the CSD on September 28, 2000 (File No. T00-00290), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 16, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail October 3, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Joseph Burriesci's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 100).

**COUNT 141:** Talk.com knowingly made or caused to be made a telephone solicitation on September 16, 2000 to Joseph E. Burriesci, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

101. Cora L. Bamberg of 320 Hardin Lane, Apt. D41, Sevierville, Tennessee, filed a complaint with the CSD on September 27, 2000 (File No. T00-00298), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September

18, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail October 3, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Cora Bamberg's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 101).

**COUNT 142:** Talk.com knowingly made or caused to be made a telephone solicitation on September 18, 2000 to Cora L. Bamberg, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

102. Norma J. Corbin of 1430 Bakers Work Road, Burns, Tennessee, filed a complaint with the CSD on October 3, 2000 (File No. T00-00305), alleging that Talk.com had made or caused to be made a telephone solicitation to her telephone number on September 5, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail October 9, 2000. The CSD has no record of receiving a response pertaining to the Notice of Alleged Violation accepted by Talk.com on or about October 6, 2000.



(Norma Corbin's complaint and the CSD's notification are attached hereto as collective Exhibit 102).

**COUNT 143:** Talk.com knowingly made or caused to be made a telephone solicitation on September 5, 2000 to Norma J. Corbin, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

103. Jackie W. Fortune of 1843 Northwood Drive, Knoxville, Tennessee, filed a complaint with the CSD on October 9, 2000 (File No. T00-00339), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on August 3, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail October 18, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Jackie Fortune's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 103).

**COUNT 144:** Talk.com knowingly made or caused to be made a telephone solicitation on August 3, 2000 to Jackie W. Fortune, a residential subscriber in this state who objects to

receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

104. Bruce H. Luttrell of P.O. Box 5388, Knoxville, Tennessee, filed a complaint with the CSD on October 12, 2000 (File No. T00-00342), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on September 7, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail October 18, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(Bruce Luttrell's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 104).

**COUNT 145:** Talk.com knowingly made or caused to be made a telephone solicitation on September 7, 2000 to Bruce H. Luttrell, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

105. David E. Thompson of 1345 McCoy Road, Greeneville, Tennessee, filed a complaint with the CSD on October 18, 2000 (File No. T00-00354), alleging that Talk.com had made or caused to be made a telephone solicitation to his telephone number on October 5, 2000, notwithstanding the fact that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail October 26, 2000.

In response to the complaint, Talk.com states:

Talk.com Holding Corp. is aware of and makes every effort to comply with the laws and regulations regarding telephone marketing activities. The telemarketing vendor we use does subscribe to a National "No Sales Solicitation Calls List" and the various state "Do Not Call Lists" and this information is updated on a regular basis. However, Talk.com Holding Corp., in order to further ensure compliance with these rules, has recently completed and submitted the application to subscribe to the Tennessee Do Not Call Register. We will incorporate this register into our procedures. Additionally, we have added this consumer's telephone number to our internal Do Not Call List.

(David Thompson's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 105).

**COUNT 146:** Talk.com knowingly made or caused to be made a telephone solicitation on October 5, 2000 to David E. Thompson, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

106. Chad Jerrell of 101 Peggy Street, Madison, Tennessee, filed a complaint with the CSD on February 10, 2001 (File No. T01-00081), alleging that Talk.com had knowingly made or caused to be made two (2) telephone solicitations to his telephone number on or about January 27, 2001 and February 10, 2001, notwithstanding the fact that the phone number was properly

included on the Tennessee "Do Not Call" register since 2000. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail February 13, 2001.

In response to the complaint, Talk.com states on February 15, 2001:

In response to the Notice Of Alleged violation, our records indicate, and we confirmed that 615-865-7174 was placed on our internal "Do Not Call" registry on 10/15/00. We have no record of calling this telephone number since that date.

On March 8, 2001, Talk.com states:

Talk.com Holding Corp. (Talk.com) does maintain a Do Not Call List that includes the Tennessee Do Not Call Register. Talk.com washes all approved leads against its Do Not Call List and sends only the Approved Leads to each of its telemarketing centers and limited outsource centers that uses it. Those outsource centers are required to only call the Approved Leads. We do not believe that this number was on the Approved Leads list, which is washed against all applicable Do Not Call Lists.

We have researched the complaint and do not have record of soliciting this telephone number however, if our company contacted this consumer, we believe that it may have been from a very old list.

(Chad Jerrell's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 106).

**COUNT 147:** Talk.com knowingly made or caused to be made a telephone solicitation on or about January 27, 2001 to Chad Jerrell, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

**COUNT 148:** Talk.com knowingly made or caused to be made a second telephone solicitation on February 10, 2001 to Chad Jerrell, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such

objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

107. Emory Smith of 1010 Barnes Road, Antioch, Tennessee, filed a complaint with the CSD on February 21, 2001 (File No. T01-00105), alleging that Talk.com had knowingly made or caused to be made a telephone solicitation to his telephone number on February 12, 2001, notwithstanding the fact that that the phone number was properly included on the Tennessee "Do Not Call" register. The CSD sent a Notice of Alleged Violation to Talk.com via fax and certified mail February 26, 2001.

In response to the complaint, Talk.com states:

Upon researching the issues brought to our attention we show this complaint is based on solicitation calls. We have added this consumer's telephone number to our "Do Not Contact List."

(Emory Smith's complaint, the CSD's notification and Talk.com's response are attached hereto as collective Exhibit 107).

**COUNT 149:** Talk.com knowingly made or caused to be made a telephone solicitation on February 12, 2001 to Emory Smith, a residential subscriber in this state who objects to receiving telephone solicitations and has given proper notice to the Authority of such objection and whose number appeared in the "Do Not Call" Register in effect sixty (60) days prior to the time said solicitation was made in violation of Tenn. Code Ann. § 65-4-404 and Tenn. Comp. R. & Reg. 1220-4-11.

## Summary Of Charges

### I. Violations Related to Slamming

1. Tenn. Code Ann. § 65-4-125(a) prohibits telecommunications service providers from designating or changing the provider of telecommunications services to a subscriber if the provider knew or reasonably should have known that such provider does not have the authorization of such subscriber.

2. Under Tenn. Code Ann. § 65-4-125(f), telecommunications service providers who violate Tenn. Code Ann. § 65-4-125(a), or any regulation promulgated pursuant to that section, "shall be subject to a civil penalty of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) for each day of any such violation."

3. This Order includes thirty-four (34) complaints from Tennessee consumers alleging that Talk.com converted their telephone service without authorization in violation of Tenn. Code Ann. § 65-4-215(a) and the regulation promulgated pursuant to that section, Tenn. Comp. R. & Reg. 1220-4-2-.56.

4. The total number of days of alleged violations arising from Talk.com's unauthorized conversion of Tennessee consumers' telephone service in violation of Tenn. Code Ann. § 65-4-125(a) is three thousand, two hundred and four (3,204). The days of violation are calculated from the date the service was allegedly switched without authorization until the date service was returned to the consumer's preferred provider.

5. Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(a)(4) requires that promotional checks containing letters of agency authorizing a carrier to initiate a change of service shall confirm:

(i) the end user's billing name and address and each telephone number to be covered by the local and/or interLATA and intraLATA long distance service change order;

(ii) that any carrier designated in a letter of agency as a preferred local exchange, preferred interLATA or preferred intraLATA long distance carrier is the carrier directly setting rates for the end user; and

(iii) that the end user understands that any local exchange and/or interLATA and intraLATA carrier selection the end user chooses may involve a charge to the end user for changing the end user's local exchange and/or interLATA and intraLATA long distance carrier.

6. This Order includes fifteen (15) complaints arising from the issuance of promotional checks by Talk.com or its affiliates. The CSD's preliminary investigation indicates that each of these promotional checks contained one or more violations of Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(a)(4). For purposes of this Order, the use of each one of these promotional checks shall constitute one (1) day of violation as contemplated by Tenn. Code Ann. § 65-4-125(f), resulting in fifteen (15) days of violation.

7. Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1) requires that all change orders include the following verification data, which shall be disclosed during the confirmation call:

- (i) The "company name of the independent third party verifier;"
- (ii) A "[r]equest whether the end user would like to verify his/her decision to switch service at the present time or wait until a later time;"
- (iii) "[T]he approximate time frame in which the change will occur;"
- (iv) A "statement at the end of the conversation confirming that a request will or will not be submitted to the end user's LEC to change his or her preferred local exchange service provider, PIC or LPIC."

8. This Order includes fifteen (15) complaints from Tennessee consumers arising from telephone solicitations in which Talk.com allegedly failed to disclose all of the information required in verifications by Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1). The preliminary investigation disclosed eight (8) tape recorded verifications which violated Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(c)(1). For purposes of this Order, each noncompliant verification shall constitute one (1) day of violation as contemplated by Tenn. Code Ann. § 65-4-125(f), resulting in eight (8) days of violation.

9. Tenn. Comp. R. & Reg. 1220-4-2-.56(2)(e) requires that "all recordings or any other evidence of change orders shall be maintained by the submitting carrier and the local exchange carrier for one year for dispute resolution and shall be provided to the Authority upon request."

10. This Order includes seven (7) claims from Tennessee consumers in which Talk.com allegedly failed to provide a recording of evidence of a change order requested by the CSD. For purposes of this Order, each failure to provide a recording of evidence of a change order included herein shall constitute one (1) day of violation as contemplated by Tenn. Code Ann. § 5-4-125(f), resulting in seven (7) days of violation.

11. The preliminary investigation discloses that Talk.com has followed a pattern of continued violation of Tenn. Code Ann. § 65-4-125(a) and the regulation promulgated pursuant to that section, Tenn. Comp. R. & Reg. 1220-4-2-.56, requiring the Authority to issue a show cause order with respect to such acts.

#### **Violations Related to Cramming**

12. Tenn. Code Ann. § 65-4-125(b) prohibits telecommunications service providers from billing or collecting from any subscriber any charges for services to which the provider knew or reasonably should have known the subscriber has not subscribed or any amount in excess of that specified in the tariff or contract governing the charges for such services.

13. Under Tenn. Code Ann. § 65-4-125(f), telecommunications service providers who violate Tenn. Code Ann. § 65-4-125(b), or any regulation promulgated pursuant to that section, "shall be subject to a civil penalty of not less than one hundred dollars (\$100) and not more than one thousand dollars (\$1,000) for each day of any such violation."



14. This Order includes twenty-nine (29) complaints from Tennessee consumers alleging that Talk.com billed and/or collected charges for services to which Talk.com knew or reasonably should have known that the consumer had not subscribed or amounts in excess of the contract governing the charges for such services in violation of Tenn. Code Ann. § 65-4-125(b) and the regulation promulgated pursuant to that section, Tenn. Comp. R. & Reg. 1220-4-2-.58.

15. The total number of days of violation arising from Talk.com's purported improper billing or collection in violation of Tenn. Code Ann. § 65-4-125(b) is five thousand five hundred and twelve (5,512).

16. The preliminary investigation discloses that Talk.com has followed a pattern of continued violation of Tenn. Code Ann. § 65-4-125(a) and the regulation promulgated pursuant to that section, Tenn. Comp. R. & Reg. 1220-4-2-.56, requiring the Authority to issue a show cause order with respect to such acts.

#### **Violations of the "Do Not Call" Statute**

17. Tenn. Code Ann. § 64-4-404 prohibits persons or entities from knowingly making or causing to be made any telephone solicitation to any residential subscriber who has given notice to the Authority, in accordance with Tenn. Code Ann. § 65-4-401 *et seq.* and the regulation promulgated pursuant to those sections, Tenn. Comp. R. & Reg. 1220-4-11-.02, of such subscriber's objection to receiving telephone solicitations.

18. Tenn. Code Ann. § 65-4-402 prohibits persons making telephone solicitations from calling residential subscribers at any time other than between the hours of eight o'clock a.m. (8:00 a.m.) to nine o'clock p.m. (9:00 p.m.), prevailing time.

19. The Authority is authorized to initiate proceedings relative to a violation of Tenn. Code Ann. § 65-4-401 *et seq.* Such proceedings include without limitation proceedings to issue a cease and desist order, to issue an order imposing a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation, and to seek additional relief in a court of competent jurisdiction. Each violation shall be calculated in a liberal manner to deter violations and protect consumers. Each violation may include each telephone solicitation made to a residential subscriber that was on the list that the violator telephoned.

20. This Order includes forty-four (44) complaints, resulting in fifty-five (55) counts of alleged violation, from residential subscribers who contend that they received telephone solicitations from Talk.com or its affiliates after properly registering their telephone numbers in the "Do Not Call" register in effect sixty (60) days prior to the time said solicitation was made, which violates Tenn. Code Ann. § 65-5-404.

21. This Order includes one complaint by a residential subscriber alleging that he was called at a time other than between the hours of eight o'clock a.m. (8:00 a.m.) to nine o'clock p.m. (9:00 p.m.), prevailing time.

22. The presently calculable number of violations of Tenn. Code Ann. § 65-4-125(a) (slamming) and (b) (cramming) and Tenn. Comp. R. & Reg. 1220-4-2-.56 and Tenn. Comp. R. & Reg. 1220-4-2-.58 included in this Order is one hundred and forty-seven (147). The authorized civil penalty for such violations is "not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day of any such violation." Tenn. Code Ann. § 65-4-125(f). The presently calculable total of the number of days during which said violations occurred is eight thousand, seven hundred and sixteen (8,716). The presently calculable

penalty authorized by law for said violations ranges from eight hundred seventy-one thousand six hundred (871,600) to eight million, seven hundred and sixteen thousand (8,716,000) dollars.

The number of violations of Tenn. Code Ann. §65-4-401 *et seq.* (telephone solicitations) and Tenn. Comp. R. & Reg. 1220-4-11 included in this Order is fifty-six (56). Tennessee law authorizes a civil penalty for such violations of “up to a maximum of two thousand (\$2,000) dollars.” Tenn. Code Ann. § 65-4-405(f). The maximum penalty authorized by law for said violations is one hundred and twelve thousand (\$112,000) dollars.

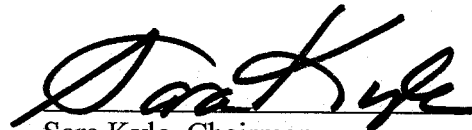
The presently calculable, total number of violations of all the laws and regulations included in this Order is two hundred and two (202). The presently calculable, maximum, total penalty for all the violations of Tennessee law and regulations included in this Order is eight million, nine hundred fifteen thousand (\$8,915,000) dollars.

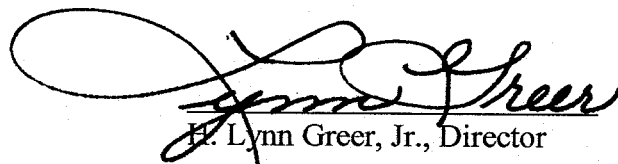
**BASED UPON THE FOREGOING**, the Authority hereby determines that Talk.com should appear and show cause why the Authority should not (1) impose a civil penalty upon Talk.com of not less than one hundred dollars (\$100) nor more than one thousand dollars (\$1,000) for each day of knowing violation of Tenn. Code Ann. § 65-4-125(a) and (b) and Tenn. Comp. R. & Reg. 1220-4-2-.56 and Tenn. Comp. R. & Reg. 1220-4-2-.58; and (2) initiate proceedings relative to violations of Tenn. Code Ann. §65-4-401 *et seq.* and Tenn. Comp. R. & Reg. 1220-4-11 and impose a civil penalty up to a maximum of two thousand dollars (\$2,000) for each knowing violation.

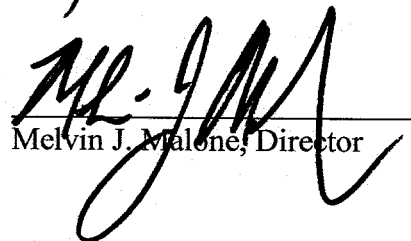
**IT IS THEREFORE ORDERED THAT:**

1. Talk.com, Inc. shall appear before the Authority, upon further notice, and show cause why the Authority should not issue a cease and desist order, impose civil penalties pursuant to Tenn. Code Ann. §§ 65-4-125(f) and (405)(f) and take other lawful action for the unlawful actions of Talk.com, Inc. as set forth in this Order.

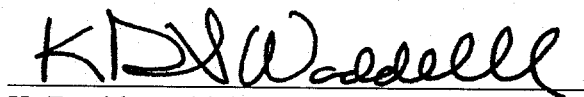
2. The parties to this action, the Consumer Services Division and Talk.com, Inc., shall appear for a Pre-Hearing Conference at the time and date to be set by the Pre-Hearing Officer in this matter to establish a procedural schedule for the discovery and submission of pre-filed testimony and for such other purposes as may be allowed by law.

  
Sara Kyle, Chairman

  
H. Lynn Greer, Jr., Director

  
Melvin J. Malone, Director

ATTEST:

  
K. David Waddell, Executive Secretary